S. HRG. 111–623

# PENDING LEGISLATION HEARING

# HEARING

BEFORE THE

## COMMITTEE ON VETERANS' AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

MAY 19, 2010

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MAY 19, 2010

## SENATORS



## WITNESSES



## APPENDIX

# PENDING LEGISLATION HEARING

**WEDNESDAY, MAY 19, 2010**

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC.*

The Committee met, pursuant to notice, at 9:30 a.m., in room 418, Russell Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Murray, Brown of Ohio, Begich, Brown of Massachusetts, and Burr.

## OPENING STATEMENT OF DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. The hearing of the Committee on Veterans' Affairs of the U.S. Senate on pending health and benefits legislation will come to order. Aloha.

Today we will look at legislation pending before the Committee. The bills on the agenda reflect the desire among members of both parties to better serve the veterans who have served us so well. As we begin this legislative cycle, I will briefly note the progress the Committee has already made in this Congress.

Last October, advance funding legislation from this Committee was enacted to finance VA health care 1 year ahead of the regular appropriations process. This was a major change and one long overdue. Earlier this month, the President signed the Caregivers and Veterans Omnibus Health Services Act. This new law creates a program to support the caregivers of wounded warriors. It will also improve health care for veterans in rural areas, help VA adapt to the needs of women veterans, and strengthen VA's workforce. At this point, we must focus on proper implementation.

Turning to the agenda before us, I will leave it to the witnesses and the various Members on this Committee to talk in more detail about the bills. I will note briefly a series of small and technical bills that I introduced. While they will likely not garner much attention this morning, they are a direct result of Committee oversight of VA's claims benefits process.

These bills address specific problems involving VA pension, survivor benefits, claims for veterans who are unable to understand and complete an application, and judicial review.

While we work with the administration to fully attack the claims process, it is my hope that these small but important steps will improve the quality and timeliness of benefits decisions.

Finally, I note that there are bills on the agenda that carry significant mandatory costs which trigger PAYGO issues. We are

working with CBO to get firm numbers on those costs, but it is important to be aware of the challenges of moving legislation that has mandatory spending.

I offer my thanks again to my colleagues and to the witnesses who are here.

I want to welcome our witnesses and thank you for being here today. Secretary Jefferson, as I believe you have been advised, you will not be permitted to testify today since the Department's testimony was not received until shortly before 5 o'clock yesterday, over 31 hours late. Given this late submission, I was inclined to exclude Labor's participation and that of other witnesses who did not comply with Committee rules since the Members have not had the opportunity to review the testimony. I do not suppose that you are directly responsible for this situation. [Laughter.]

But as the designated witness, you have to be the one to hear the Committee's concerns and carry them back to the Secretary and his top managers. If the Department is to participate in the legislative process, there must be at a minimum timely submission of testimony on pending legislation.

Other witnesses, including the VA, were able to review and comment on a large list of pending legislation and testimony that was submitted by the Committee's deadline of Monday at 9:30 a.m. I will be following up to learn exactly what happened with respect to today's hearing and to identify ways to keep this problem from occurring again.

Moving on, we have VA witnesses Tom Pamperin, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration; Dr. Robert Jesse, M.D., Principal Deputy Under Secretary for Health at the Veterans Health Administration. They are accompanied by Richard J. Hipolit and Walter Hall, both assistant general counsels for VA.

I thank you all for being here this morning. Mr. Pamperin, you may begin with your testimony.

**STATEMENT OF THOMAS J. PAMPERIN, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL; AND WALTER A. HALL, ASSISTANT GENERAL COUNSEL**

Mr. PAMPERIN. Thank you, Mr. Chairman, and good morning. I am pleased to be here today to provide the VA's views on pending legislation.

I will not be able to address a few of the bills on today's agenda because we did not have sufficient time to develop and coordinate the administration's position and cost estimates, but with your permission we will provide that information in writing for the record. Those bills are S. 3286, S. 3314, S. 3325, S. 3330, S. 3348, S. 3352, S. 3355, S. 3367, S. 3368, S. 3370, and Senator Burr's draft bill to improve VA's multifamily transitional housing program. Similarly, for most of the bills I will address today, we request permission to provide cost estimates for the record at a later date.

Chairman AKAKA. We will look forward to those for the record.

Mr. PAMPERIN. Very good.

VA supports S. 3107, the cost-of-living adjustment. Current economic assumptions project no increase in the cost of living. If that assumption holds true, there would be no benefit costs associated with this bill.

While VA cannot support a number of bills in their present form, we can support them with modification and would be glad to work with the Committee on them.

S. 1866 would extend eligibility for burial in a national cemetery to the parents of certain veterans. On October 8, 2009, VA provided testimony to the Subcommittee on Disability Assistance and Memorials Affairs, House Committee on Veterans' Affairs, on a similar bill, H.R. 761. At the request of that committee, VA provided technical assistance clarifying the impact of the provisions of the bill. The amended bill, which addresses VA concerns, was incorporated into H.R. 3941.

S. 3192, the Fair Access to Veterans Benefits Act of 2010, would require the Court of Appeals for Veterans Claims to extend "for such time as justice may require" the 120-day period for appealing a board decision.

Although the VA supports extension of the 120-day appeal period under certain circumstances, we have several concerns. Because the bill would not limit the length of time that an appeal period could be extended, appellants could potentially be able to appeal to the board at any time after it was issued—even decades later—as long as good cause was shown.

To avoid these and other potential problems resulting from an unlimited appeal period and retroactive application, the administration is developing a proposal that would take a more focused approach.

S. 3234, the Veteran Employment Assistance Act, would create programs aimed at improving employment, training, and placement services furnished to veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom.

Section 8 of the bill would authorize VA, in consultation with DOL and the Department of Interior, to establish a program to award grants to States to establish a veterans conservation corps.

VA supports efforts to expand volunteer and employment opportunities for veterans. However, VA does not support the provision of these services through grant programs unless funds are expressly appropriated for that purpose.

VA does not support S. 1780, the Honor America's Guard and Reserve Retirees Act, which would deem certain persons who have otherwise performed qualifying active duty to have been on active duty for purposes of VA benefits who are entitled under Chapter 1223 of Title 10 of the U.S. Code to retired pay. Active service is the foundation for providing VA benefits. In recent years, the Guard and Reserve have played an important role in the Nation's overseas conflicts. Virtually all those who served in recent conflicts were called to active duty and qualify for benefits. This bill, however, would extend the same status to those who were never called.

S. 1939, the Agent Orange Equity Act, would expand the category of veterans who are afforded the presumption of service connection for exposure to Agent Orange. Agent Orange was not sprayed overseas and did not affect high-altitude airplanes.

Although it is not part of today's agenda, the administration is developing an administrative proposal to would cover many health care, benefits, and management issues. The VA's proposal will include proposals to change voc rehab, promote greater efficiency, and permit extension of the delimiting date for education, and provide Veterans Group Life Insurance to those insured for less than the maximum amount.

I would turn it over to Dr. Jesse.

Chairman AKAKA. Thank you very much, Mr. Pamperin.

Now we will receive the testimony of Dr. Jesse.

**STATEMENT OF ROBERT JESSE, M.D., ACTING PRINCIPAL DEPUTY UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL; AND WALTER A. HALL, ASSISTANT GENERAL COUNSEL**

Dr. JESSE. Thank you. Good morning, Mr. Chairman and Members of the Committee. It is my pleasure to appear before you for the first time today as the Acting Principal Deputy Under Secretary for Health, and I am pleased to be here with Mr. Pamperin to discuss three bills on the agenda that pertain specifically to Veterans Health Administration.

I do not yet have a clear position on S. 3325, which would prohibit collection of co-payments for telehealth or telemedicine visits of veterans, and I request permission to provide views and cost estimates for the record at a later date.

S. 2751 would designate the VA medical center in Big Spring, TX, as the George H. O'Brien, Jr., Department of Veterans Affairs Medical Center. We defer to Congress in the naming of Federal facilities in honor of individuals, and we thank the Committee for honoring distinguished veterans like Mr. O'Brien and the like.

S. 3035, the Veterans Traumatic Brain Injury Care Improvement Act of 2010, would require the Secretary to submit to Congress a report on the feasibility and advisability of establishing a Polytrauma Rehabilitation Center or Polytrauma Network Site for VA in the northern Rockies or the Dakotas.

VA shares the Committee's concern for providing treatment facilities for polytrauma in this region. We heard the concerns raised earlier this month by Ms. Karen Bohlinger, the Second Lady of Montana, and the challenges she and her son have faced in receiving accessible care for TBI. We were heartened to hear that her son is receiving good care in Seattle, and we believe their experience may be made a little easier with the enhancement of a Polytrauma Support Clinic Team VA is establishing in Fort Harrison, MT. This VA facility will have a strong telehealth component and meets the needs and the workload volume of veterans with mild to moderate Traumatic Brain Injury in Montana, the Dakotas, and northern Rockies.

Since we have already conducted an evaluation of the needs for TBI facilities in the northern Rockies and Dakotas and we are already taking action to improve both access to care and quality of care available in the region, VA believes that further legislation is not necessary.

I would like to say further that VA is planning to spend about $13 million over the next 10 years to staff and maintain the enhanced Polytrauma Support Clinic Team at Fort Harrison, and I would be pleased to provide the Committee with more detailed information about our findings and decisions regarding the needs of veterans in the northern Rockies and Dakota region.

S. 1940 would require the Secretary to complete a study of the effects on children of exposure of their parents to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era. Mr. Chairman, VA supports a greater scientific understanding of the effects on children of parents exposed to herbicides in Vietnam. However, VA is unable to support S. 1940 because it would be extremely difficult at this time to assemble data that would result in a scientifically valid conclusion. The challenges of such a study include developing methods and techniques to track and locate subjects across multiple generations and account for diverse health effects. We believe it would be very difficult to identify, locate, and obtain consent of enough participants to render any findings valid. Moreover, such a study would take more than 1 year to complete.

These are concerns we have about this legislation, and I hope they may help explain why VA believes that the study S. 1940 would require is not currently feasible. We estimate the costs of conducting the study would be approximately $6.3 million over 5 years.

This concludes my statement, and I would be pleased to answer any questions you or the Committee might have. Thank you.

[The prepared statement of Mr. Pamperin and Dr. Jesse follows:]

PREPARED STATEMENT OF THOMAS J. PAMPERIN, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION

Mr. Chairman, I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending legislation. Also testifying this morning is Dr. Robert Jesse, Acting Principal Deputy Under Secretary for Health, Veterans Health Administration, and accompanying us are Assistant General Counsels Richard J. Hipolit and Walter A. Hall.

I will not be able to address a few of the bills on today's agenda because we did not have sufficient time to develop and coordinate the Administration's position and cost estimates, but with your permission we will provide that information in writing for the record. Those bills are S. 3286, S. 3314, S. 3325, S. 3330, S. 3348, S. 3352, S. 3355, S. 3367, S. 3368, S. 3370, and Senator Burr's draft bill to improve VA's multifamily transitional housing program. Similarly, for most of the bills that I will address on today's agenda, we request permission to provide cost estimates for the record at a later date.

S. 1780

S. 1780, the "Honor America's Guard-Reserve Retirees Act," would deem certain persons (namely, former members of the National Guard or Reserves who are entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who would be entitled to such retired pay but for their age) who have not otherwise performed "qualifying active duty service" to have been on active duty for purposes of VA benefits.

Under current law, a National Guard or Reserve member is considered to have served on active duty only if the member was called to active duty under title 10, United States Code, and completed the period of duty for which he or she was called to service. Eligibility for some VA benefits, such as disability compensation, pension, and dependency and indemnity compensation, requires a period of "active military, naval, or air service," which may be satisfied by active duty, or by certain periods of active duty for training and inactive duty training during which the service-

member becomes disabled or dies. Generally, those periods are: (1) active duty for training during which the member was disabled or died from disease or injury incurred or aggravated in line of duty; and (2) inactive duty training during which the member was disabled or died from an injury incurred or aggravated in line of duty.

S. 1780 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for all VA benefits, despite not having served on active duty or in active service or, if called to active duty, not having served the minimum active-duty period required for eligibility.

VA does not support this bill. Current benefits eligibility is based either on active duty or a qualifying period of active service during which a member was physically engaged in serving the Nation in an active military role. Active service is the foundation for providing VA benefits. In recent years, the National Guard and Reserves have played an important role in our Nation's overseas conflicts. Virtually all those who served in recent conflicts were called to active duty, which qualifies them as Veterans and provides potential eligibility for VA benefits. This bill, however, would extend the same status to those who were never called to active duty and did not suffer disability or death due to active duty for training or inactive duty training, and hence do not have active service. VA would be obligated to provide compensation and health-care for disabilities resulting from injuries incurred in civilian activities, as well as from diseases that develop, during the 20 years that count toward retirement, regardless of any relationship to actual active duty or training drills. Providing compensation and other VA benefits based solely on retirement status would be inconsistent with VA's mission of providing benefits to Veterans who earned them as a result of active service.

Statutes already authorize memorial benefits (burial in national cemeteries, burial flags, and grave markers) to this group of individuals. Therefore, S. 1780 would not provide any additional benefit related to the National Cemetery Administration (NCA), nor would it present any additional budget concerns related to the benefits NCA provides.

S. 1866

S. 1866 would extend eligibility for burial in a national cemetery to the parents of certain Veterans, provided that VA determines that space is available in open national cemeteries and that the Veteran does not have a spouse, surviving spouse, or child who has been buried or who, if deceased, would be eligible for burial in a national cemetery under 38 U.S.C. § 2402(5). Although the bill is apparently intended to apply to the parents of deceased Veterans, as drafted it would also apply to the parents of living Veterans, as well as to the parents of servicemembers and other individuals eligible for burial in national cemeteries. Currently, only parents who are eligible in their own right as a Veteran or spouse of a Veteran are eligible for burial in a national cemetery. While VA cannot support this bill as currently drafted, we would support this bill if it were modified to allow for burial of parents only in cases involving the death of an unmarried and childless servicemember who died due to combat or training-related injuries.

On October 8, 2009, VA provided testimony to the Subcommittee on Disability Assistance and Memorials Affairs, House Committee on Veterans' Affairs, on a similar bill, H.R. 761. At the request of that Committee, VA provided technical assistance clarifying the impact of provisions of the bill. The amended bill, which addressed VA concerns, was incorporated into H.R. 3949 as section 303, the "Corey Shea Act." The House of Representatives passed that bill on November 3, 2009, and it was sent to the Senate and referred to this Committee.

As VA testified regarding H.R. 761, the primary reason we do not support S. 1866 is our concern that, by extending eligibility for national cemetery burial to parents, this bill would reduce the number of gravesites available for Veterans, who have served our Nation. We believe that preserving sufficient burial space for Veterans should take priority over extending burial eligibility to others.

We also note that the definition of "parent" in 38 U.S.C. § 101(5) is broad enough that more than two individuals could qualify for burial as the parent of a particular Veteran. Birth parents, adoptive parents, step parents, and foster parents could be eligible for burial under this bill as currently drafted.

Furthermore, the Secretary already may permit the burial of a Veteran's parents in a national cemetery. Section 2402(6) of title 38, United States Code, which permits the Secretary to designate "other persons or classes of persons" as eligible for burial, authorizes the Secretary to permit the burial of parents in a national cemetery. In 2007 and 2008, the Secretary approved two separate requests for the burial

of a parent in the same grave as an unmarried, childless servicemember who died as a result of wounds incurred in combat. Neither deceased servicemember had a spouse or child who was buried or would be eligible for burial in a national cemetery.

VA would support legislation adopting similar burial eligibility criteria for parents to address the small number of compelling cases in which an unmarried servicemember without children dies due to combat or training-related injuries. By using Department of Defense Casualty Offices' records, VA would be able to determine whether a deceased servicemember died as a result of combat or training-related injuries and whether the servicemember has a surviving spouse or child eligible for burial. This narrower proposal, to extend to parents eligibility for burial in the same gravesite with their child, would allay our concern that extending eligibility to parents would reduce the number of national cemetery gravesites available for Veterans. VA would, therefore, support a modified version of S. 1866 to formally and publicly recognize the ultimate sacrifice of fallen servicemembers and the unique burden of their surviving parents without negatively impacting burial access for qualified Veterans. VA would be glad to provide technical support should the Committee request it in order to modify the bill.

If S. 1866 as currently drafted were enacted, VA would incur estimated costs of $27,000 in the first year, $180,000 over five years, and $462,000 over ten years.

S. 1939

S. 1939, the "Agent Orange Equity Act of 2009," would expand the category of Veterans who are afforded a presumption of service connection for certain diseases by 38 U.S.C. § 1116(a) and a presumption of exposure to certain herbicide agents by section 1116(f). It would essentially change the category from Veterans who served in the Republic of Vietnam during a specified period to Veterans who served in the vicinity of the Republic of Vietnam during that period, including the inland waterways of, ports and harbors of, the waters offshore, and the airspace above the Republic of Vietnam. It would also extend the presumptions to Veterans who served on Johnston Island during the period from April 1, 1972, through September 30, 1977, or who received the Vietnam Service Medal or the Vietnam Campaign Medal. All of these changes would be effective as of September 25, 1985.

Under VA's regulation implementing section 1116, 38 CFR § 3.307(a)(6)(iii), "service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. While the presumption of herbicide exposure already extends to Veterans with duty or visitation on the ground in Vietnam or on its inland waterways, S. 1939 would greatly increase the number of Veterans eligible for service connection of the diseases presumed associated with herbicide exposure to include many Veterans whose service would not have placed them at risk of exposure to herbicides. Those who would be included under the bill include Veterans who served aboard naval vessels operating on open offshore waters far from the coastline of Vietnam; Veterans who served on high altitude jet aircraft flying missions over Vietnam airspace; Veterans who served on Johnston Island in the Pacific Ocean between April 1, 1972, and September 30, 1977, where unused herbicide agents were stored and ultimately disposed of; and Veterans who served in Thailand, Laos, or Cambodia, or the airspace above those nations, in support of the war effort in Vietnam.

VA does not support this bill. The intended purpose of legislation codified at 38 U.S.C. § 1116 was to provide a presumption of herbicide exposure for Veterans who may have been exposed to tactical military herbicide use within the Republic of Vietnam and to provide presumptive service connection for certain diseases associated with this potential exposure. Extensive aerial spraying of Agent Orange and other herbicide agents in Vietnam between 1962 and 1971 is well documented. This tactical herbicide use was aimed at destroying enemy food crops, removing jungle cover from enemy positions, and providing defoliated free fire zones around U.S. bases to discourage enemy attacks. Because of the difficulty of determining which military units or individual servicemembers may have been directly exposed, the presumption was extended to all Veterans who served within the country or on its inland waterways. Any of these Veterans may have been exposed, and that justifies extending the presumption to them. However, the same cannot be said of the categories of Veterans who would be added by this bill.

Herbicides were not sprayed over the open offshore waters of Vietnam, and high-altitude jet aircraft had no contact with the herbicides sprayed by low-altitude propeller-driven cargo planes. On Johnston Island, herbicides were stored in a remote fenced-in security area with limited access for military personnel. Receipt of the Vietnam Service Medal or Vietnam Campaign Medal for war effort support in Thai-

land, Laos, or Cambodia is not related to the potential for exposure to tactical herbicide use in Vietnam itself.

S. 1939 would thus provide a presumption of herbicide exposure to Veterans who were not exposed to tactical military herbicide use. This would create an inequity in that Veterans who were not exposed would be afforded the same favorable presumption as those who were or may have been exposed. S. 1939 would essentially change the basis for the presumption from service in an area of documented herbicide use to any service that supported the war effort in Southeast Asia.

In summary, VA does not support this bill because it would expand the presumption of herbicide exposure to categories of Veterans who were not exposed to the tactical herbicides used in Vietnam. It would undermine the original Congressional intent of providing health care and disability compensation to deserving Veterans whose diseases are presumptively associated with herbicide exposure during Vietnam service.

S. 1940

S. 1940 would require the Secretary to complete a study of the effects on children of exposure of their parents to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era. While VA supports a greater scientific understanding of the effects on children of parents exposed to herbicides in Vietnam, VA does not support S. 1940 because it would be extremely difficult at this time to assemble data for such a study that would result in a scientifically valid outcome.

In 2008, the Institute of Medicine's (IOM's) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides conducted a preliminary assessment of the question of paternally mediated, trans-generational effects and suggested that epidemiologic studies of adult offspring would be difficult. The challenges of such a study include developing methods and techniques to track and locate subjects across multiple generations and accounting for diverse health effects.

Viewing the proposed study that would be required by S. 1940 in light of the IOM's findings, we believe that identifying, locating, and obtaining consent to participate from the offspring of Vietnam Veterans and the adult offspring of the Vietnam-era Veterans that would be needed for comparison would be very difficult. As we are unaware of any directory or listing of Vietnam Veterans' children, the logistics of this study would require a multi-year effort inconsistent with the one-year timeframe the bill would require for reporting on VA's findings. Even with a successful effort to contact and enroll appropriate individuals into the proposed study, there would most likely not be a sufficient number to allow for scientifically valid estimates of the trans-generational effect of paternal exposure.

For these reasons, VA believes that the study and report that S. 1940 would require are not feasible. We estimate that the cost of conducting the study would be approximately $6.3 million over five years.

S. 2751

S. 2751 would designate the VA medical center in Big Spring, Texas, as the George H. O'Brien, Jr., Department of Veterans Affairs Medical Center. Mr. O'Brien was awarded the Medal of Honor for his actions in battle in Korea and, following service, volunteered at the VA medical center in Big Spring. He died in 2005. We defer to Congress in the naming of Federal property in honor of individuals.

S. 3035

S. 3035, the "Veterans Traumatic Brain Injury Care Improvement Act of 2010," would require the Secretary to submit to Congress a report on the feasibility and advisability of establishing a Polytrauma Rehabilitation Center or Polytrauma Network Site for VA in the northern Rockies or the Dakotas.

VA shares the concern for providing treatment facilities for polytrauma in this region and has already completed an assessment of need. VA has determined that an enhanced Polytrauma Support Clinic Team with a strong telehealth component at the Ft. Harrison, Montana, VA facility would meet the needs and the workload volume of Veterans with mild to moderate Traumatic Brain Injury (TBI) residing in the catchment area of the Montana Healthcare System. It would also facilitate access to TBI rehabilitation care for other Veterans from the northern Rockies and the Dakotas through telehealth. However, establishment of a Polytrauma Rehabilitation Center or Polytrauma Network Site, which would focus on the treatment of moderate to severe TBI, is not feasible or advisable in this area based on the needs of the population served. Because of the action already being taken by VA, this bill is not necessary, and we do not support it.

The estimated cost of staffing the Polytrauma Support Clinic Team at Ft. Harrison would be $1 million in the first year, $6.1 million for five years, and approximately $13 million over 10 years.

Mr. Chairman, we would be pleased to provide the Committee with more detailed information about our findings and decisions regarding the northern Rockies and the Dakotas.

S. 3107

S. 3107, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2010," would provide an increase for the rates of disability compensation and dependency and indemnity compensation by a percentage commensurate with the annual Social Security cost-of-living adjustment, effective December 1, 2010.

VA supports this bill, which is consistent with the President's FY 2011 budget request. This legislation is necessary to guard the affected benefits against any eroding effects of inflation. The worthy recipients of these benefits deserve no less.

Current economic assumptions project no increase in the cost-of-living. If that assumption holds true, there would be no benefit costs associated with this bill, nor would there be an administrative cost.

S. 3192

S. 3192, the "Fair Access to Veterans Benefits Act of 2010," would require the Court of Appeals for Veterans Claims (Veterans Court) to extend "for such time as justice may require" the 120-day period for appealing a Board decision to the Veterans Court upon a showing of good cause. It would apply to a notice of appeal filed with respect to a Board decision issued on or after July 24, 2008. It would require the reinstatement of any "petition for review" that the Veterans Court dismissed as untimely on or after that date if, within 6 months of enactment, an adversely affected person files another petition and shows good cause for filing the first petition on the date it was filed.

Although VA supports the extension of the 120-day appeal period under certain circumstances, VA has several concerns with this bill. Because the bill would not limit the length of time the appeal period could be extended, appellants would potentially be able to appeal a Board decision at any time after it was issued—even decades later—as long as good cause is shown. This would create great uncertainty as to the finality of Board decisions, which could burden an already overburdened claim-adjudication system and create confusion as to whether a VA regional office, the Board, or the Veterans Court has jurisdiction over a claim.

Petitions for relief under the "good cause" provision could potentially add hundreds of cases to the Veterans Court's docket, which could increase the processing time for all cases in the court's inventory. The reinstatement of already dismissed untimely appeals could add even more cases. In view of the open-ended and retroactive nature of the provision, the potential number of new appeals is impossible to quantify, but it might be enormous.

To avoid these and other potential problems resulting from an unlimited appeal period and retroactive application, the Administration is developing a proposal that would take a more focused approach. It would permit the Veterans Court to extend the appeal period for up to an additional 120 days from the expiration of the original 120-day appeal period upon a showing of good cause, provided the appellant files with the Veterans Court, within 120 days of expiration of the original 120-day period, a motion requesting extension. The proposal would ameliorate harsh results in extreme circumstances, e.g., if a claimant were mentally incapacitated during the entire 120-day appeal period, but by limiting how late an appellant could request extension and how long the period could be extended, would not unduly undermine the finality of Board decisions, which is necessary for efficient administrative functioning. Placing an outer limit on the appeal period would maintain the purpose of the rule of finality, which is to preclude repetitive and belated readjudication of Veterans' benefits claims.

In addition, the proposal would be applicable to Board decisions issued on or after the date of enactment and to Board decisions for which the 120-day period following the 120-day appeal period has not expired as of the date of enactment. It would provide a generous approach but one that is carefully crafted so as not to unduly increase the court's caseload and delay Veterans' receipt of timely final decisions on their appeals.

We estimate that enactment of VA's legislative proposal as contemplated would result in no significant costs or savings.

S. 3234

S. 3234, the "Veteran Employment Assistance Act of 2010," would create programs aimed at improving employment, training, and placement services furnished to Veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom.

Section 3(b) of the bill would require the Small Business Administration, VA, and the Department of Labor (DOL) to assess the efficacy of establishing a Federal direct loan program for small business concerns owned and controlled by Veterans and to submit to Congress a report on the assessment within 180 days of enactment. VA has no objection to this provision.

Section 7 of the bill would provide benefits for apprenticeship and on-the-job training (OJT) under the Post-9/11 GI Bill. Section 7 would provide for payment of a monthly benefit to individuals pursuing full-time programs of apprenticeship or other OJT, using a graduated structure similar to that applicable for such training under other VA educational assistance programs, including the Montgomery GI Bill-Active Duty (MGIB-AD) and Selected Reserve (MGIB-SR) programs and the Post-Vietnam Era Veterans Educational Assistance program. Section 7 also would amend current law to include apprenticeship or other OJT training programs as approved programs of education for purposes of the Post-9/11 GI Bill.

Pursuant to section 7, for each of the first 6 months of an individual's pursuit of an apprenticeship or other OJT program, the individual would be paid 75 percent of the "monthly benefit payment otherwise payable to such individual" under chapter 33. For the second 6 months of such pursuit, the individual would be paid 55 percent of such amount, and for each of the following months the individual would be paid 35 percent of such amount. In addition, this bill would authorize payment to such individuals of a monthly housing stipend equal to the monthly amount of the basic allowance for housing payable for a servicemember with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the individual resides. We note that, unlike the monthly housing stipend authorized under 38 U.S.C. § 3313(c), this section contains no provision requiring payment of reduced amounts of such monthly stipend in cases where individuals' aggregated active-duty service is less than 36 months.

For each month an individual receives a benefit under this bill, VA would charge the individual's entitlement at a rate that reflects the applicable percentage (i.e., 75, 55, or 35 percent, as appropriate).

The amendments made by section 7 would take effect as if included in the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 (Title V, Public Law 110–252). That is, the effective date would be August 1, 2009.

VA supports allowing individuals who qualify for the Post-9/11 GI Bill to receive benefits for OJT and apprenticeship training, subject to Congress's identifying offsets for any additional costs. However, VA cannot support enactment of this section as drafted.

The bill would provide a monthly assistance benefit, plus a monthly housing stipend amount to trainees. This would be in addition to any wages a trainee may receive. Further, as noted, this bill provides that the monthly benefit would be equal to a percentage "of the monthly benefit payment otherwise payable" to an individual under chapter 33. However, unlike the MGIB-AD, which provides for monthly payments of educational assistance other than monthly housing stipends, no "monthly" benefits are payable to a student or trainee under the Post-9/11 GI Bill. VA's payment of educational assistance under 38 U.S.C. § 3313 (for actual charges of an individual's tuition and fees) is made directly to the institution of higher learning on a lump-sum basis for the entire quarter, semester, or term. Thus, it is unclear to what monthly benefit the provision refers in order to determine the amount of any payment to an individual.

If enacted, this bill would take effect as if it had been included in Public Law 110–252, the Post-9/11 Veterans Educational Assistance Act of 2008. VA would have to manually re-work all apprenticeship and OJT cases for individuals wishing to elect to receive assistance under the Post-9/11 GI Bill for training that occurred on or after August 1, 2009. VA is currently programming a new payment system to implement the provisions of the Post-9/11 GI Bill. Full deployment of the new system is expected by December 2010. Incorporating new rules for the payment of benefits for apprenticeship and OJT training, as proposed, would require system changes that could not be accommodated, at the earliest, until after that date. Such changes would delay deployment of the new system and require VA to continue processing claims on a manual basis.

Section 8 of the bill would authorize VA, in consultation with DOL and the Department of the Interior, to establish a program to award grants to States to estab-

lish a "veterans conservation corps" (corps). Each State corps would be established within, or in affiliation with, the "veterans agency" of the State and would provide Veterans with volunteer and employment opportunities in conservation projects that would provide for training, education, and certification in environmental restoration and management fields. These projects would include: (1) restoring natural habitat; (2) maintaining Federal, state, or local forest lands, parks and reserves, as well as other reservations, water, and outdoor lands; (3) maintaining and improving urban and suburban storm water management facilities and other water management facilities; and (4) carrying out hazardous materials and spills response, energy efficiency and other environmental maintenance, stewardship, and restoration projects.

Each corps, in order to incorporate training, education, and certification into the volunteer and employment opportunities afforded Veterans, would consult with: (1) State and local workforce investment boards; (2) local institutions of higher education, including community colleges; (3) private schools; (4) State or local agencies, including State employment agencies and State forest services; (5) labor organizations; (6) business involved in the environmental industry; and (7) such other entities as the Secretary of Veterans Affairs considers appropriate.

In order to assist Veterans enrolled in the program to obtain employment in the fields of environmental restoration and management, the corps would partner with one-stop centers, State and local workforce investment boards, and other State agencies. The corps would also assist Veterans, in conjunction with State and local workforce investment boards, to identify appropriate employment opportunities in their local communities that would use the skills developed while in the Armed Forces and facilitate internships or job shadowing. The corps would assist with, or provide, referrals for obtaining benefits available to Veterans and match Veterans with conservation projects that would be aligned with each Veteran's goals.

The grant amount that could be awarded to a State under the conservation corps program established by section 8 could not exceed $250,000 in any year.

Each State receiving a grant to establish a Veterans conservation corps program would be required to submit a report on the performance of the Veterans conservation corps in that State to VA and the House and Senate Committees on Appropriations and Veterans' Affairs. These reports would include a description of how the grant amount was used and an assessment of the performance of the corps, including a description of the Veterans' labor market in that State for the current and previous year.

VA supports efforts to expand volunteer and employment opportunities to Veterans, particularly with respect to environmental restoration and management. However, VA does not support the provision of these services through grant programs unless funds are expressly appropriated for this purpose. If each of the 50 States received the maximum grant, we estimate that $12.5 million would be needed annually. VA does not currently have a mechanism for awarding such grants and managing such grant programs, but DOL has extensive expertise and experience in managing grants to States. DOL's Veterans' Employment and Training Service (VETS) currently manages grants to States to provide employment services and outreach to Veterans at one-stop centers. The purpose and requirements of this bill appear to be a very good match with the current functionality of the VETS program.

Section 9 of the bill would authorize VA, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training, to establish a center of excellence to support research, development, planning, implementation, and evaluation of methods for educational institutions to give academic credit for military experience and training to certain Veterans (those discharged or released from service within 48 months of application for admission to such institutions or those who were members of the reserve components of the Armed Forces).

Acting through the center of excellence, VA would award grants to, or enter into contracts with, eligible institutions to achieve the purposes of the center. An eligible institution for this purpose would be defined as any partnership that meets such requirements as VA promulgated and consists of an institution of higher education (IHE) and one or more of the following entities: (1) a community college; (2) a university teaching hospital; (3) a military installation, including a facility of the National Guard; (4) a VA medical center; and (5) a military medical treatment facility. VA could not award a grant or contract in an amount less than $2 million or more than $5 million.

To receive a grant or contract, an institution would be required to submit to VA an application for this purpose. VA would give priority to applicants who include as a partner an IHE or other educational institution that: (1) affords appropriate recognition to military experience and training in screening candidates; (2) has a practice of, or would establish a practice of (if proposing such a practice, would include with the application a review of such a plan by a professional organization)

giving academic credit for military experience and training; (3) has established a professional development and delivery system using evidence-based practices; or (4) has demonstrated experience working with the Department of Defense or VA.

Each eligible institution receiving a grant or contract would be required to use it for one or more of the following purposes: (1) to develop or implement a plan to modify programs of education and admissions programs at IHEs to give academic credit to the Veterans and members described above; (2) to develop standards for the identification of military experience and training in individuals applying for enrollment at IHEs; (3) to train professors, educators, and instructors at IHEs on the means of best teaching students at such institutions with military experience and training; (4) to develop curriculum for IHEs that are appropriately tailored to individuals with military experience and training; (5) to develop admissions and recruitment guidelines for IHLs to attract Veterans and members described above and afford them recognition for military experience and training in their admissions processes; and (6) to establish a program, a method, or standards to be utilized by IHLs for assessing the education and training during the pursuit of a program of education and at the completion of such program.

Because the grants are to be used for admissions policies, recruitment, granting of prior credit, instruction of professors and other teaching staff, modifying the institution's existing programs of education, and suggesting modifications to curriculum, VA believes that the Department of Education, in consultation with VA and DOL, is best positioned to establish the center of excellence for the purposes of these grants. Therefore, we do not support enactment of this section.

Section 11 would require DOL, in consultation with VA and the Departments of Defense and Health and Human Services, to establish a program to enable transitioning military members to build on the technical skills learned during military service to help them enter public health fields. VA defers to DOL regarding this program.

VA'S LEGISLATIVE PROPOSAL

Although it is not on today's agenda, the Administration is developing a legislative proposal that would cover many health, benefits, and management issues. The legislative proposal would include provisions to: (1) revise vocational rehabilitation and education benefits to increase the utility of incentives for employers to provide on-the-job training to Veterans with service-connected disabilities; (2) promote greater efficiency in the approval of educational programs; (3) permit extension of the delimiting date for education benefits for a beneficiary serving as the primary caregiver of a seriously injured Veteran; and (4) provide Veterans Group Life Insurance participants who are insured for less than the maximum amount the opportunity to purchase additional coverage and make permanent the current authority to extend Servicemembers' Group Life Insurance coverage for two years to Veterans who are totally disabled when they leave service.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions you or the other Members of the Committee may have.

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THE SECRETARY OF VETERANS AFFAIRS,
*Washington, July 30, 2010.*

Hon. DANIEL K. AKAKA,
*Chairman,*
*Committee on Veterans' Affairs,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on twelve of the thirteen bills listed in your May 21, 2010 letter. In addition, we are providing cost estimates for two bills about which we testified at the Committee's May 19, 2010, hearing but for which we were unable to develop cost estimates in time for that hearing. We will provide views and costs on S. 3486 to the Committee in a separate letter.

S. 1780

As we previously testified, VA does not support S. 1780, the "Honor America's Guard-Reserve Retirees Act," which would deem certain persons (namely, former members of the National Guard or Reserves who are entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who would be entitled to such retired pay but for their age) who have not otherwise performed "qualifying active duty service" to have been on active duty for purposes of VA bene-

fits. If S. 1780 as currently drafted were enacted, VA would incur estimated benefit costs of $957.5 million during the first year, $6.0 billion for 5 years and $15.5 billion over 10 years. Veterans Benefits Administration (VBA) administrative costs are estimated to be $50.0 million the first year, $73.2 million over 5 years, and $110.9 million over 10 years. In addition to VBA administrative costs are IT costs, which are estimated to be $2.2 million the first year, $2.4 million over 5 years, and $3.3 million over 10 years. In addition to VBA administrative costs are minor construction costs, which are estimated to be $8.5 million the first year, $8.5 million over 5 years, and $8.6 million over 10 years.

S. 1939

As we also previously testified, VA does not support S. 1939, the "Agent Orange Equity Act of 2009," which would expand the category of Veterans who are afforded a presumption of service connection for certain diseases by 38 U.S.C. § 1116(a) and a presumption of exposure to certain herbicide agents by section 1116(f). If S. 1939 as currently drafted were enacted, VA would incur estimated benefit costs of $25.4 billion the first year, $38.8 billion for 5 years, and $57.4 billion over 10 years. VBA administrative costs are estimated to be $184.5 million the first year, $1.0 billion over 5 years, and nearly $2.4 billion over 10 years.

S. 3234

S. 3234, the "Veteran Employment Assistance Act of 2010," would create programs aimed at improving employment, training, and placement services furnished to Veterans, especially those serving in Operation Enduring Freedom or Operation Iraqi Freedom. We testified that VA does not object to section 3(b), relating to the establishment of a direct loan program for small business concerns owned and controlled by Veterans; that VA does not support section 7 as drafted, despite supporting the intent of allowing individuals who qualify for the Post–9/11 GI Bill to receive benefits for on-the-job and apprenticeship training, subject to Congress identifying offsets for any additional costs; that, although VA supports efforts to expand volunteer and employment opportunities to Veterans, we do not support section 8 unless funds are expressly appropriated for providing such services through grant programs; that we do not support section 9, relating to methods for educational institutions to give academic credit for military experience and training to certain Veterans; and that VA defers to the Department of Labor regarding section 11, relating to enabling transitioning Servicemembers to build on the technical skills learned during military service to help them enter public health fields. The analysis below provides cost information for S. 3234.

Section 3(b) of the bill would require VA, in conjunction with the Small Business Administration (SBA) and the Department of Labor, to prepare and submit to Congress a report on the efficacy of establishing a Federal direct loan program for small business concerns owned and controlled by Veterans. Because SBA already runs a similar program, we would ask that they take the lead in preparing the report, and our efforts would be limited to staffing the report to existing offices. Accordingly, we estimate that section 3(b) would not result in additional costs to VA.

Section 7 of the bill would provide benefits for apprenticeship and on-the-job training under the Post–9/11 GI Bill. VA estimates that section 7 would result in mandatory costs of $154.5 million during the first year, $806.6 million over 5 years, and $1.7 billion over 10 years.

Section 8 of the bill would authorize VA, in consultation with the Department of Labor and the Department of the Interior, to establish a program to award to states grants to establish a "veterans conservation corps." VA estimates benefit costs for section 8 would be $12.5 million during the first year, $62.5 million over 5 years, and $125 million over 10 years.

Section 9 of the bill would require the Secretary of Veterans Affairs, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training, to establish a center of excellence to support research, development, planning, implementation, and evaluation of methods for educational institutions to afford academic credit for military experience and training to certain Veterans. VA estimates that section 9 would result in administrative costs of $587 thousand for the first year, $4.6 million over 5 years, and $10.7 million over 10 years, as well as information technology costs of $49 thousand the first year, $107 thousand over 5 years, and $183 thousand over 10 years.

S. 3286

S. 3286 would require VA to commence, within 120 days, a 2-year pilot program to assess the feasibility and advisability of awarding grants to state and local gov-

ernment agencies and nonprofit organizations to assist Veterans in submitting claims for VA benefits with the intent of reducing the time required by VBA to process such claims. The assistance provided to Veterans under these grants would include collecting evidence in support of a claim, submitting the claim to VBA, and other matters as determined by the Secretary of Veterans Affairs.

VA supports measures that would provide assistance and information to Veterans and other claimants to obtain the benefits to which they are entitled. However, VA does not support this bill because it is unnecessary. Claimants already have access to an extensive network of state, county, and service organization offices that currently provide these services. Furthermore, the bill would provide for grants to governmental entities that are already established and funded to assist Veterans in filing their claims, e.g., state and county Veterans service offices.

VA has other concerns about the bill. VA would not be able to commence the pilot program within the 120-day period mandated by the bill because of the time required to develop and publish regulations setting out the grant program, including grant criteria and requirements. Also, the bill would not authorize appropriations from which to make the grants. If additional funds are not authorized, the expense of grants and staff necessary to administer the program would come out of existing resources.

The cost of the proposed pilot program cannot be estimated because the amount of grant funding to be provided would be solely at the discretion of the Secretary.

S. 3314

S. 3314 would require VA and the Appalachian Regional Commission to jointly carry out a program of outreach to Veterans who reside in the Appalachian region for purposes of increasing access and use by Veterans of Federal, state, and local Veterans benefits programs and increasing awareness of, and eligibility for, such programs.

VA supports the objective of improving outreach to Veterans and other potential claimants, but does not support this bill because it would mandate outreach to only one geographic area and because it is unnecessary in light of VA's ongoing efforts to provide outreach in this area.

VA is currently making special efforts to provide medical care and access in the Appalachian region. Throughout the states and counties within this region, VA has set up an extensive and diverse array of rural initiatives, including Outreach Clinics, Community-Based Outpatient Clinics, expanded Care Coordination Home Telehealth initiatives, and the use of unscheduled Mobile Medical Units to perform assessments and physicals at events.

VA has also taken aggressive steps to ensure awareness of the facilities, initiatives, and benefits available to Veterans. Examples include partnering with states such as Maryland to use unoccupied offices in rural areas to conduct mental health assessments and provide services; collaborating with rural community health centers, such as the community health center in Harrisonburg, Virginia, to increase enrollment and improve coordination of care; and activating rural health literacy outreach, such as in the Asheville, North Carolina, area, where events were held or scheduled in an area covering the 20 counties of Western North Carolina. This is only the beginning. VA plans to continue its outreach efforts to Veterans and their families in this region. Because of VA's substantial outreach efforts to Veterans in this region, we do not believe this bill is necessary and thus do not support it. However, VA would be happy to meet with the Committee to discuss the special needs of Appalachian Veterans.

VA cannot estimate costs for this program without additional information because it is unclear to what extent VA would need to enter into contracts for the outreach that this bill would mandate.

S. 3325

S. 3325 would authorize VA to waive the imposition or collection of copayments for telehealth and telemedicine visits of Veterans. The mission of VA's Telehealth program office is to expand access to care for Veterans through telehealth technologies. Telehealth is a new modality of care. We believe it would be inappropriate to waive copayments for Veterans who receive telehealth services at a VA facility while Veterans who see their VA provider in person in the same facility would be charged a copayment.

VA is examining the impact of copayments for care provided by video telehealth in a patient's home. A video consultation into the home is used to provide remote case management, health promotion/disease prevention, enhancement of patient self-management, and early recognition of deleterious symptoms and signs of patient

deterioration from chronic disease conditions. The use of video consultation into the home is analogous to that of telephone call for which no co-payment is required, and not comparable to a clinic visit.

Recent VA experience demonstrates that co-payments for home-telehealth may have resulted in a reduced use of this intervention. To ensure convenient and cost-effective care to populations of patients who will otherwise delay care and incur larger costs from emergency room visits and hospital admissions VA will take the appropriate action to waive or modify copayments for in-home video telehealth care for Veterans. Because VA already has the authority to waive or modify the imposition of co-payments for such care, legislation is not required.

VA estimates a revenue loss of $2 million in the first year, $17.7 million over 5 years and $83.4 million over 10 years if VA stops collecting copayments for all telehealth visits.

S. 3330

S. 3330, the "Veterans' Health and Radiation Safety Act of 2010," would require VA to report to Congress annually on low-volume programs (defined as programs that treat 100 patients or fewer annually) at VA medical facilities. The report would have to include the Secretary's evaluation and findings with respect to such programs. Additionally, S. 3330 would require employees working at VA hospitals where radioactive isotopes are used to receive training on recognizing and reporting medical events. Hospitals failing to provide this training would be prohibited from using radioactive isotopes for a period of time determined by the Secretary. Lastly, the bill would require VA to evaluate non-government medical services contractors through weekly independent peer reviews, written evaluations, and other evaluations VA determines are appropriate. A contracting officer would be required to review and consider the results of these evaluations before VA renews any contracts with non-government medical services contractors.

We are aware of a very unfortunate lapse that occurred at a brachytherapy program at one of our facilities. We testified about this incident before the House Committee on Veterans' Affairs on July 22, 2009. On May 3, 2010, the Office of the Inspector General (OIG) issued a report on this incident with five recommendations. Specifically, the OIG recommended that the Veterans Health Administration (VHA) standardize, to a practical extent, the privileging, delivery of care, and quality controls for the procedures required to provide this treatment. This has been accomplished. Standardized procedures have been developed, and site visits have verified that they are uniformly in place at all facilities and that steps have been taken to ensure that patients who received low radiation doses in the course of brachytherapy are evaluated to ensure that their cancer treatment plan is appropriate. We have contacted all Veterans who were potentially impacted for follow-up testing and monitoring at other VA and private facilities and are reviewing the controls that are in place to ensure that VA contracts for health care comply with applicable laws and regulations. Where necessary, we will make organizational and/or procedural changes to bring this contracting effort into compliance. A template that outlines basic requirements for all contracts is currently in development.

The OIG also recommended that senior VA leadership meet with senior Nuclear Regulatory Commission leadership to determine if there is a way forward that will ensure the goals of both organizations are achieved. VA is currently working to arrange this meeting. Finally, the OIG recommended that VHA work with the OIG to develop a list of documents that should routinely be provided to the OIG when an outside agency is notified of a possible untoward medical event. VHA will work closely with the OIG to meet this recommendation.

We appreciate the intent behind S. 3330, but for a number of reasons we do not support it. First, we note that section 2 would require the Secretary to submit annual reports to Congress on low volume programs. However, the definition of a "program" is not clear. Any treatment "program" could be defined so narrowly that no facility treats 100 patients or more per year in a particular program or so broadly that almost every program includes more than 100 patients annually. Moreover, treatment quality is not always related to patient volume or patient volume just within a given VA facility. Many VA facilities have on staff specialist providers who also work elsewhere in the community. If all care provided by a specialist is combined, the volume can be, and many times is, significantly more than can be accounted for just within VA workload. In addition, standard credentialing, privileging, and review of quality of care are required at every facility regardless of the size of a program.

All procedures that are performed and all medical care that is provided at any VA facility involve quality assessment and oversight. The first procedure each year

has precisely the same quality assessment requirements as the last, whether the annual procedure total is 5, 50, or 500. Further, each procedure is performed by a fully credentialed and privileged physician. Instead of the requirement to provide an annual report on "low volume" programs, we would like to work with Congress to identify what information would be useful for Congress to receive annually.

The mandatory training that would be required by section 3 would apply to all VHA staff and would not be limited to staff directly involved in the use of radioactive materials. Nuclear Regulatory Commission regulations already require all staff involved in the use of radioactive materials to have training and facilities to provide evidence of that training. Competency and training requirements for staff are based upon their defined duties and risks associated with those duties. In VHA, radiation safety training and education are provided annually, through the VA Learning Management System, to all staff involved in the use or handling of radioactive material. This includes all contract staff or physicians working in VA Nuclear Medicine services as a condition of their authorization to practice at a VA medical center. The definition of a medical event and reporting requirements are taught to, and reviewed annually with, all Nuclear Medicine technologists and physicians. VA's National Health Physics Program provides a mechanism to ensure that the training provided is completed as required by VA policy. In addition, VA currently supports and trains all staff in reporting any untoward events or potential events consistent with guidance provided by the National Center for Patient Safety and the facility safety programs. As a result, many of the requirements of section 3 are duplicative of current VA policy.

The requirement in section 4 to obtain weekly independent peer reviews of all medical services provided pursuant to a contract, and written evaluations of the services carried out by the supervisor or manager of the employee providing the services, is excessive and would add unwarranted cost in staff time spent procuring and developing the reports. The requirement to undertake peer reviews each week may be ineffective if the number of procedures in a week is insufficient to carry out a statistically valid review. The requirement for additional reporting and oversight of all medical services provided by contract, most of which have not reported adverse events, would be a waste of resources. Given current VA procedures related to peer review and reporting, some of the provisions in this bill are not necessary. We are available to meet with Committee staff to discuss these issues in more detail.

While VA appreciates the Committee's focus on this issue, we believe that these additional measures are not necessary in view of the above regulatory requirements, safeguards, and training. VA estimates that costs for this bill, if enacted, would be $64.2 million for the first year, $347.5 million over 5 years, and $770.5 million over 10 years.

S. 3348

S. 3348 would require that certain misfiled documents be treated as motions for reconsideration of decisions of the Board of Veterans' Appeals (Board). A document so treated would be a document that expresses disagreement with a Board decision, is filed with the Board or the VA agency of original jurisdiction within 120 days after the Board issues the decision, and is filed by a person who is adversely affected by the Board decision but has not timely filed a notice of appeal with the United States Court of Appeals for Veterans Claims (Veterans Court). Such a document would not be treated as a motion for reconsideration if the Board or the agency of original jurisdiction determines that the document expresses an intent to appeal the Board decision to the Veterans Court and forwards the document to the Veterans Court, and the court receives the document within 120 days after the Board issued the decision.

VA objects to the bill for two reasons. First, it would require the Board to decide motions for reconsideration of decisions without any meaningful basis for such reconsideration. This is because the bill would allow reconsideration of previously final decisions based on nothing more than a mere expression of disagreement, rather than based on the current reconsideration standard of obvious error of fact or law. Second, by requiring VA to make an initial determination as to whether a notice of appeal was filed in a case, the bill would place VA in the unprecedented position of determining whether a particular case falls within the jurisdiction of the Veterans Court, a superior tribunal. The additional activity that S. 3348 would require could potentially burden an already overburdened adjudication system and introduce uncertainty as to the finality of Board decisions.

We believe that legislation recently proposed by VA that would authorize the Veterans Court to extend the 120-day period for appealing a Board decision on a show-

ing of good cause presents a better solution for appellants who are unable to correctly file a notice of appeal of a Board decision. Under VA's proposal, the Veterans Court would determine whether the facts and circumstances of a particular case justify an extension of the statutory time period for filing an appeal, and the Board would not have to decide a case a second time with no clearly discernible benefit flowing to the Veteran.

Concerning costs, the Board processes between 800 and 900 motions for reconsideration each year at a cost of approximately $587,000. The Board cannot predict the number of motions for reconsideration it would have to decide each year under the bill because the proposed standard involves too many variables. However, because S. 3348 would potentially treat all expressions of disagreement filed within the 120-day period for appealing a Board decision as motions for reconsideration, it is reasonable to conclude that the number of such motions decided would increase significantly along with VA's costs in issuing such decisions.

S. 3352

S. 3352, the "Veterans Pensions Protection Act of 2010," would liberalize the existing exemption in section 1503(a)(5) of title 38, United States Code, by excluding from income, for purposes of determining eligibility for VA pension, payments regarding reimbursement for expenses related to: accident, theft, loss, or casualty loss; medical expenses resulting from such causes; and pain and suffering related to such causes. The exemption for payments received to reimburse Veterans for medical costs and pain and suffering is an expansion of the current exclusions.

VA opposes excluding from countable income payments received for pain and suffering because such payments do not represent a reimbursement for expenses related to daily living. The proposed treatment of such payments would be inconsistent with a needs-based program. We believe that payments for pain and suffering are properly considered as available income for purposes of the financial needs test for entitlement under section 1503.

VA does not oppose the remaining provisions of this bill, exempting reimbursement for accident, theft, loss, casualty loss, and resulting medical expenses, subject to Congress identifying offsets for any additional costs.

Because current law excludes from pension income calculations reimbursements from any casualty loss, there would be no benefit costs associated with the provisions relating to accident, theft, loss, or casualty loss. VA lacks sufficient data to determine potential benefit costs associated with the provisions relating to medical costs and pain and suffering.

VA estimates there would be no additional administrative or full-time employee costs associated with this bill.

S. 3355

S. 3355, the "Veterans One Source Act of 2010," would require VA to establish and maintain an interactive Internet Web site that provides information on the benefits, resources, services, and opportunities provided by VA, other Federal agencies, and other sources.

VA supports the objective of S. 3355. However, VA has already collaborated with the Department of Defense (DOD) in the creation of a joint eBenefits Internet portal in response to the recommendations of the President's Commission on Care of America's Returning Wounded Warriors (Dole/Shalala), made in March 2007. This new Web site (www.ebenefits.va.gov) provides Servicemembers, Veterans, family members, and care providers a single transparent access point to online information about benefits, services, and other resources. It provides a consolidated catalog of links to existing information on VA, DOD, and other Federal and state agency Web sites concerning benefits, services, and related resources. Obtaining a Defense Self-Service log-on account in order to access eBenefits has recently become mandatory for all Servicemembers and allows them to carry their eBenefits account through their life cycle and concurrently allows VA and DOD to regularly update benefit-related information. Because the eBenefits portal meets the intent and nearly all of the requirements of S. 3355, VA believes this bill is unnecessary.

Much of the information the bill would call for is available now in the eBenefits portal. Current topics include compensation, pension, health care, education benefits, home loans, financial services, employment assistance, reemployment rights, memorial benefits, Social Security benefits, DOD programs, state benefits, and Veterans Service Organizations. The eBenefits portal offers quick access to online application tools and other assistance to claimants. Secure access capabilities allow for personalization of content and services.

Self-service capabilities the eBenefits portal offers include the ability to apply for many benefits online, to check the status of compensation and pension claims, to apply for a home loan certificate of eligibility, to view VA e-health records, and to access and retrieve official military personnel records. Access to blogs and online communities is also provided.

In committing to the eBenefits portal, VA and DOD have already undertaken a multi-year project that will continue to add self-service transactional capabilities and to enlarge and refine online access to benefits, services, resources, and opportunities for Servicemembers, Veterans, family members, and caregivers. Some of these features will include the ability to: opt into the VA/DOD virtual electronic lifetime health record; transfer Chapter 33 (Post–9/11 GI Bill) benefits to dependents; change an address in both VA and DOD systems of records; communicate personally via a messaging center; receive automatic notification of benefits; view information on, and apply for, all VA benefits; and self-select to receive state benefit information. VA is confident that the capabilities of the eBenefits portal will meet the objectives of S. 3355.

Funding for the eBenefits portal in FY 2010 is approximately $7.4 million, which includes contract support, operating costs, and FTE. VA estimates that overall operating costs, contract support, and FTE will be $12 million in FY 2011. The estimated cost for the capabilities required by the bill that are not included in the eBenefits portal is $1.1 million. This estimate includes costs for the following features: an animated virtual user guide; resources for caregivers (currently provided at a minimal level); information on discounts for veterans; facilitation of ride sharing for appointments; memorial notices; opportunities for volunteering; and information on community events.

S. 3356

Section 1 of S. 3356 would increase from 23 to 26 years the maximum age of eligibility for children to obtain medical care under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). VA supports the intent behind S. 3356 to extend eligibility for coverage of children under CHAMPVA until they reach age 26 so that eligibility for coverage of children under CHAMPVA will be consistent with private sector coverage under the health care reform laws. However, we note that the language of section 1, as written, would not make CHAMPVA coverage fully consistent with the private sector because it would change only the reference to a child's age, but maintain all other eligibility criteria for children covered by CHAMPVA intact. If the Committee's intent is to make CHAMPVA coverage fully consistent with the private sector, VA provides the following language:

Section 1781(c) of title 38 is amended to read as follows:

> "(c)(1) Notwithstanding clauses (i) and (iii) of section 101(4)(A) of this title, except as provided in paragraph (2), for purposes of this section, a child, who is eligible for benefits under subsection (a), shall remain eligible for benefits under this section until his or her twenty-sixth birthday, regardless of his or her marital status."
>
> "(2) Before January 1, 2014, a child will not be eligible for the extended eligibility under this subsection if the child is eligible to enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986)."
>
> "(3) This subsection shall not be construed to limit eligibility for coverage of a child described in section 101(4)(A)(ii) of this title.".

S. 3356 as written would not extend eligibility because it does not address the definition of "child" under 38 U.S.C. § 101, so the estimated cost of implementing the bill is $0, as no additional beneficiaries would be covered. The estimated cost of implementing the alternative language provided above, which would extend eligibility under CHAMPVA without regard to the age and school status limits in 38 U.S.C. § 101(4)(A)(i) and (iii), and the 101(4)(A) requirement to be unmarried, would be $64.8 million in FY 2011, $383.0 million over 5 years, and $955.8 million over 10 years.

VA defers to the National Aeronautics and Space Administration regarding section 2 of S. 3356.

S. 3367

S. 3367 would increase from $8,911 to $31,305 the maximum annual rate of pension for two disabled Veterans married to one another when both are in need of regular aid and attendance currently prescribed by section 1521(f)(2) of title 38, United States Code. This bill would have the effect of amending the law governing im-

proved pension to prospectively establish a pension rate for two Veterans married to one another, both of whom are in need of aid and attendance, at the rate that would have been payable had 38 U.S.C. § 1521(f)(2) been amended in 1998 to provide a $600 increase for each Veteran, rather than a single $600 increase for the two Veterans, and the increased rate had subsequently been adjusted by annual cost of living adjustments. VA supports this bill as an equitable approach to meeting the needs of severely disabled Veterans, subject to Congress identifying offsets for the additional costs identified below. However, VA has a technical concern with this bill. It would update in accordance with current pension rates only one of the rates specified in section 1521(f)(2). The multitude of other pension rates prescribed by section 1521 would continue to be those that were in effect years ago. To avoid confusion, should Congress decide to amend one of the rates prescribed by section 1521(f)(2), it should also update all the other rates prescribed in section 1521 to account for past cost-of-living adjustments.

Because there are only 74 pension awards for two Veterans married to one another and both in need of regular aid and attendance, VA estimates the cost of this bill, if enacted, would be $733,000 in the first year, $3.7 million over 5 years, and $8 million over 10 years. VA has determined that there would be no additional administrative or full-time employee costs associated with this bill.

S. 3368

S. 3368 would authorize certain individuals and organizations to sign an application for VA benefits on behalf of claimants under 18 years of age, mentally incompetent, or physically unable to sign the application form.

VA does not support this bill because it is unnecessary and would place Veterans, their family members, and VA at a higher risk for abuse and fraud. First, VA regulations currently provide a process for initiating a claim without a traditional signature. Section 3.2130 of title 38, Code of Federal Regulations, requires VA to accept a signature by mark or thumbprint if appropriately witnessed or certified by a notary public or certain VA employees. This alternate process enables claims to be filed by persons unable to sign an application. Second, a claimant unable to sign an application for benefits due to mental deficiency will likely be found incompetent to handle his or her own VA benefit payments, which requires VA to appoint a fiduciary, who would be qualified to sign application forms for the claimant. Allowing persons not appointed as VA fiduciaries to file claims for incompetent claimants would increase the risk that VA benefits would be diverted from claimants. For these reasons, we do not support S. 3368.

VA estimates that there would be no benefit costs or administrative costs associated with this bill.

S. 3370

S. 3370 would amend 38 U.S.C. § 5105(a), which directs the Secretary of Veterans Affairs and the Commissioner of Social Security to jointly prescribe forms for use by survivors of members and former members of the uniformed services to apply for benefits under both chapter 13 of title 38, United States Code, and title II of the Social Security Act. Under section 5105(b), when an application on such a form is filed with either VA or the Social Security Administration (SSA), it is deemed to be an application for benefits under both chapter 13 of title 38 and title II of the Social Security Act. Accordingly, applicants for survivor benefits need file only one of the prescribed forms with either agency to apply for such benefits at both agencies.

The bill would authorize but no longer require VA and SSA to jointly prescribe forms to apply for survivor benefits and, more significantly, require VA and SSA to interpret an application made on any form indicating an intent to apply for survivor benefits filed with either agency as an application for benefits under both chapter 13 of title 38, United States Code, and title II of the Social Security Act. Requiring VA and SSA to accept as an application for survivor benefits any application that indicates an intent to file for such benefits without regard to the application form would be inconsistent with the concept embodied in 38 U.S.C. § 5101(a) that a claim for veterans benefits must be made by filing a claim "in the form prescribed by the Secretary." This requirement serves the beneficial purpose of ensuring that a claim contains sufficient information as specified in the claim form to permit VA to efficiently adjudicate the claim. Permitting the filing of "any form" to constitute a claim for survivor benefits would condone use of a multitude of forms (for example, a VA Form 21–4138, Statement in Support of Claim), that might provide only minimal information and require inefficient follow up inquiries from VA. Such a procedure

would be inconsistent with VA's efforts to improve the efficiency of claim adjudications. For this reason, VA does not support S. 3370.

We estimate that there would be no cost associated with S. 3370.

S. 3377

S. 3377 would convert VA's multifamily transitional housing loan guarantee program into one that would instead provide direct loans to qualified organizations. Under current subchapter VI of chapter 20, title 38, United States Code, the Secretary is authorized to guarantee not more than 15 loans, or an aggregate amount of $100 million, for multifamily transitional housing projects. This bill would terminate the Secretary's authority to issue any new guarantees under section 2051, but would require the Secretary to make at least five direct loans to qualified organizations that plan to develop multifamily housing projects. The source of funds for the program would be the Multifamily Transitional Housing Loan Program Revolving Fund, established under section 1(b) of the bill.

VA does not support enactment of S. 3377. VA spent the better part of a decade testing the model and trying to make the multifamily transitional housing loan guarantee program work. During that time, the marketplace repeatedly revealed that there was a strong need for more programs that provide low-cost housing, including those offering supportive services for Veterans returning to gainful employment. There were three main reasons why organizations did not seek project financing through the VA program, which led them to try to instead find funding from other Federal, state, and local programs: (1) a lack of available operating subsidies (i.e., formerly homeless veterans cannot pay enough rent to generate sufficient project revenue to cover operating expenses and support services); (2) the debt repayment requirement (many local government entities offer either low-interest, interest-only, deferred, and/or forgivable debt products, which are more appealing to project sponsors than the VA loan guarantee program); and (3) the large project size requirement (large projects are difficult to site, and there is a growing trend towards developing mixed-tenancy projects). In addition, other sources of funding needed to create housing are almost exclusively tied to non-transitional housing. Persons living in transitional housing are normally still considered homeless.

Additionally, we have concerns how the program would be implemented, as it is not clear that the program structure would be consistent with other existing legislation, such as the Federal Credit Reform Act. Furthermore, the provision that would authorize the Secretary to delegate to a State or local government entity the authority to approve a loan might constitute an unconstitutional delegation of Federal authority. The statutory language should make clear that a delegation of approval authority to a State or local government entity remains subject to the Secretary's continuing supervision.

VA's 2011 Budget includes $4.2 billion to prevent and reduce homelessness among Veterans—over 3.4 billion for medical services and nearly $800 million for specific homeless programs.

VA estimates that this bill would not create any demand for multifamily transitional housing direct loans, but would result in administrative expenses of $1.05 million in year one, and $7.8 million over 10 years. If direct loans were made, they would likely be very expensive given the anticipated terms and conditions on the underlying loans. Therefore, it is not clear that Federal credit assistance is the most efficient or effective means of achieving the policy objective.

S. 3486

S. 3486 would repeal the prohibition on collective bargaining with respect to compensation of VA employees other than rates of basic pay. We will provide the Committee with formal written comments on this bill in a separate letter.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ERIC K. SHINSEKI.

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## RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO U.S. DEPARTMENT OF VETERANS AFFAIRS

*Question 1.* Can you please share any current studies by VA on exposure of Blue Water Navy Veterans to Agent Orange during the Vietnam War?

Response. Because of concerns about Blue Water Navy Veterans, the Veterans Health Administration (Office of Public Health and Environmental Hazards) con-

tracted with the Institute of Medicine (IOM) in December 2009, to evaluate potential exposure of Blue Water Navy personnel to herbicides used during the Vietnam War. The IOM Committee will determine, if possible, comparative risks for long-term health outcomes comparing Vietnam Veteran ground troops, Blue Water Navy personnel, and other "era" Veterans who served in this period at other locations. IOM's report is due by Summer 2011.

*Question 2.* Senator Klobuchar recently introduced S. 3355, the Veterans One Source Act of 2010. Is VA currently in need of additional authorities to implement the type of Web site contemplated by Senator Klobuchar in her legislation?

Response. S. 3355 calls on VA to establish a single Web site to expand and consolidate online information related to the important benefits, resources, services and opportunities available to our Veterans, their families, caregivers and survivors. VA does not require additional authorities to implement an interactive Web site as suggested in S. 3355. In 2007, VA and DOD began collaborating to create a single, transparent access point for Servicemembers, Veterans, their families, and caregivers. VA and DOD launched the joint eBenefits web portal in July 2009. This portal provides users access to online information about benefits, services, and other resources as a "one-stop shop" to fulfill an important need. It provides a consolidated catalog of links to existing information on VA, DOD, and other Federal and State agency Web sites concerning benefits, services, and related resources. The portal provides interactive tools, consistent with the intent of the legislation, which suggested interactive features to enhance personalization.

VA believes the online self-service capability to Servicemembers and Veterans provided by eBenefits meets the intent of the bill. Users can retrieve copies of their military records, view their VA disability compensation and pension claim status, obtain or submit an application for home loan certificate of eligibility and access MyHealtheVet. Every user is provided with all the necessary resources that are uniquely adapted to their specific needs and circumstances. The portal is aggressively updated every quarter to further enhance ease and usability. Future releases will include an easy change of address functionality and secure messaging with VA's health professionals.

VA is eager to continue the open dialog with our many stakeholders on how to further enhance eBenefits capabilities. For example, VA is already working to enhance outreach to Veterans and their families by providing important information about Veterans' benefits available from other State and Federal agencies. Another outreach effort involves peer-to-peer networking—a critical method for many of our Veterans to communicate. Communication with, and support from, internal and external stakeholders will continue to be key to our success as eBenefits moves forward. Our intent is for eBenefits to become the premier online self-service portal for Servicemembers and Veterans.

*Question 3.* This question also relates to S. 3355. What steps is VA taking to use social media—such as Facebook, Twitter, and YouTube—to engage with todays vets, and how successful has VA been?

Response. Since Fall 2009, VA has made a concerted effort to reach and converse with a younger community of Veterans through the use of social media, to include Facebook, Twitter, YouTube, Flickr, and blogs. Currently, VA has the fastest growing Facebook page among all Cabinet-level agencies—with more than 30,000 fans? Many who have joined in since Veterans Day (over 1,000 fans per week). VA is also rapidly expanding into the popular world of Facebook in other ways. Each administration (VHA, VBA, and NCA) now has its own page for topic-specific conversations, as do more than a dozen VA medical centers—and there are plans underway to launch a page for each medical center to monitor and update.

VA is on similar good footing with Twitter. VA now has four separate official Twitter feeds—one for the Department and each of the administrations. Since Veterans Day 2009, VA's primary Twitter feed has gained 4,500 followers—a respectable number among Cabinet-level agencies. While more than a dozen VA medical centers have active Twitter feeds, VA has begun—as with Facebook—to open accounts for each medical center in 2010. In January, 2010 VA also launched its first official Twitter feed for a VA principal, as Assistant Secretary Tammy Duckworth is now engaging with the public via her own VA Twitter account. Primarily, Ms. Duckworth "tweets" about pursuing a Ph.D. with her GI Bill benefits in a way to encourage other warriors to pursue and finish higher education.

VA has also embraced video and photo-sharing media with the use of YouTube (videos) and Flickr (photos). VA has begun posting each segment from its Emmy award winning news magazine program, The American Veteran, on YouTube while showcasing a selection of them on the VA homepage. At the same time, VA has a separate YouTube channel dedicated to health care and administered by VHA,

which has posted more than 90 videos, has 1,500 subscribers, and more than 83,000 views. Recently, VBA posted "team photos" of their Regional Processing Centers in a "thank you" to the hard working teams. While posted, the photos received over 17,000 "hits."

In terms of blogging, VA has plans to launch an online communications hub in 2010, which will feature a central VA blog, topical blogs, and have a section for guest pieces—submitted by both the VA staff as well as the public. Until the launch, VA has been spreading its important messages via other blog sites—with pieces published at the White House Blog, Military.com, and The Huffington Post.

For this year's outstanding on-line outreach efforts to Veterans, VA's Office of Public Affairs' work has been written about and recognized in both the Washington Post (http://www.washingtonpost.com/wp-dyn/content/article/2010/04/08/AR2010040805128.html) and the Huffington Post (http://www.huffingtonpost.com/richard-allen-smith/vet-bloggers-storm-americ b 467186.html).

Chairman AKAKA. Thank you very much, Dr. Jesse.

Mr. Pamperin, can you please elaborate on VA's statement that S. 1939 would make many veterans whose service during the Vietnam War would not have placed them at risk of exposure to herbicides eligible for presumption of a service connection?

Mr. PAMPERIN. Sir, I would be happy to. Tactical herbicide was used to defoliate trees. We already provide for presumptive service connection for naval personnel and Air Force personnel who were in brown water where we can demonstrate that they were ashore or even if they transited for only a very short time in Vietnam. But many of these ships were hundreds of miles away from the shore. In fact, a very senior naval officer told me when he was working for VA that when he was a submarine commander, they would make it a point to go inside the tactical zone so that they could get the Vietnam Service Medal. They were submerged at the time.

So we do not believe that herbicide would have extended hundreds of miles offshore, nor would it have affected high-altitude aircraft.

Chairman AKAKA. As a follow-up question, do you have an estimate on the number of veterans who would become eligible under this legislation?

Mr. PAMPERIN. We have a limited amount of information. When the Court of Appeals for Veterans Claims held that the Vietnam Service Medal warranted the Agent Orange presumptive, we did a cost analysis. The Navy was not able to give us a list or a definitive number of military personnel that were affected. However, what they did tell us was, given the known deployment of ships, they estimated naval people who would be affected at about 800,000. In terms of Air Force, we have not done that kind of study, but we can get back to you on it.

Chairman AKAKA. Dr. Jesse, I believe that expanding the use of telehealth solutions is important as it increases access to care for veterans, especially those in rural areas. I know VA has not had an opportunity to officially comment on the bill sponsored by Senator Begich, but perhaps you can speak generally. Do you know if the Department realizes any savings by expanding the delivery of care through telehealth?

Dr. JESSE. Sir, I do not think I can speak to that directly, but we could get back to you for the record on that. I am sorry.

Chairman AKAKA. Thank you.

[Items were not received by the Committee by the deadline for printing.]

Chairman AKAKA. Secretary Jefferson, what insights can you offer on the employment situation among individuals who have been separated from service for more than 10 years?

Mr. JEFFERSON. Well, sir, we know that the age of veterans with the highest unemployment rate are those 20 through 24, and for those veterans as they get older, the rate is much more aligned with the average unemployment rate for Americans.

Having said that, we are always looking at ways that we can reach out to any cohort of veterans to provide them better services or any services which can be customized to their unique situation.

PREPARED STATEMENT OF RAYMOND M. JEFFERSON, ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Chairman Akaka, Ranking Member Burr, and Members of the Committee: I am pleased to appear before you today to discuss legislation pending in this Committee.

The Veterans' Employment and Training Service (VETS) proudly serves Veterans and transitioning Service Members by providing resources and expertise to assist and prepare them to obtain meaningful careers, maximize their employment opportunities and protect their employment rights.

I am deeply humbled to have the privilege of serving our Nation as the Assistant Secretary for Veterans' Employment and Training. Secretary Solis has been an incredible source of guidance and support, and has made Veterans and VETS one of her top priorities. Our programs are an integral part of Secretary Solis's vision of "Good Jobs for Everyone," and her commitment to help Veterans and their families get into the middle class and maintain stability.

First let me describe what the Veterans' Employment and Training Service at the Department of Labor does. We have four main programs that we are working to improve:

- The Jobs for Veterans State Grants;
- The Transition Assistance Program Employment Workshops;
- The Homeless Veterans' Reintegration Program; and
- The Uniformed Services Employment and Reemployment Rights Act.

Your letter of invitation indicates you are seeking input on a significant number of bills at this hearing and you want me to specifically provide my views on S. 3234, the proposed "Veteran Employment Assistance Act of 2010. I am also providing comments regarding S. 3314, which would carry out a program of outreach for Veterans' who reside in Appalachia Because the other bills are under the purview of the Department of Veterans Affairs (VA), I defer to the VA and will restrict my comments to S. 3234 and S. 3314.

S. 3234

The Veteran Employment Assistance Act of 2010, S. 3234, is intended to "improve employment, training, and placement services furnished to Veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom, and for other purposes." The Department of Labor supports the goals of the Veteran Employment Assistance Act of 2010.

This comprehensive legislation will address the unique needs of our Veterans who have been struggling to find work and to keep their jobs. The legislation fills a critical need. This bill will help our Veterans gain the additional skills they need to participate in today's modern economy. It will provide them the opportunity to start their own businesses, if they choose to. And, it encourages employers at all levels to recognize that those who've given much in the service of their country have much to offer to a prospective employer.

Much in S. 3234 if enacted would significantly help the Veteran community. I would like to highlight some of the key provisions of this bill.

The Veterans Business Center Program established in Section 3 of the bill would provide entrepreneurial training and counseling to Veterans. As we all know, small business is the main driver of job creation in our country. Veterans make ideal entrepreneurs, they have the discipline, maturity and life experiences to take on the tremendous challenges that small business ownership entails. Targeting entrepreneurship programs to this community makes sense. If enacted and fully funded, we would be pleased to work with SBA on this initiative.

Section 5 requires all new state employees, Disabled Veterans Outreach Program specialists (DVOP) and Local Veterans Employment Representatives (LVER) to be

trained by the National Veterans' Training Institute (NVTI) within a one year period from the date of hire. Current law requires it be done in three years. Those employed before enactment of S. 3234 would have to be trained within one year following enactment unless they have already been trained. We believe that this training needs to be provided as soon as practicable. However, these individuals are not always hired at the same time and, depending on the number of new hires, there may not be sufficient new hires to fill a class.

Section 6 adds a new section 4216 to Chapter 42 of title 38 United States Code, that requires the Assistant Secretary for Veterans' Employment and Training (ASVET) provide a monthly training subsistence allowance to a Veteran who is enrolled in a full time employment and training program. Covered Veterans would include those who do not qualify for VA's educational and training assistance under Title 38, have been unemployed for four consecutive months, and can complete the training program.

The Department notes this section establishes an entitlement to this assistance, which is a concern in light of the long-term financial challenges the Nation faces. The assistance would be available without regard to the financial need of the Veteran or the need for training to enhance his or her employment prospects.

The Department also notes that Veterans receive priority of service within the wide array of training programs currently available through the DOL-funded One-Stop Career Center system. Moreover, Pell Grants and other financial assistance may also be available for unemployed veterans, including eligibility for unemployment insurance benefits, as well.

In the event this legislation is enacted and appropriations are provided, the Department would need to address several issues prior to its implementation, including:

- Developing a system of certification and payment;
- Determining options to include employment specialists in One-Stop Career Centers certifying Veterans; and
- Develop a payment system, which would include collaborating with the Department of Defense to ascertain payment amounts under section 403 of title 37, United States Code.

The Department believes the training allowance program's highest priority should be those eligible Veterans who, without this benefit, would be unable to obtain the training necessary to find a good job. It should be reserved for those who truly need it or have significant barriers to employment.

Section 9 establishes within the VA a Center of Excellence where the ASVET would have a consultative role to establish a system of affording academic credit for military experience and training under certain circumstances. This recognition of military experience and training should be useful in preparing a resume and establishing capabilities with prospective employers. Additionally, it may also be helpful if the Service Member is applying to a college or vocational institution. These institutions want information on the Service Member's military training and experience, as well as how this might relate to the civilian world.

Current law codified at 38 U.S.C. §4212(d) requires certain Federal contractors to report data on their workforce and on certain Veterans in their employ. This is accomplished by filing a VETS 100A Report with DOL. Section 10 of this bill would require DOL to publish the VETS 100A Reports on the Internet. DOL supports this provision. However, the Committee should recognize that some contractors might believe that certain reported data, in particular data on the total number of new hires, should not be made available to their competitors.

There are many other components to S. 3234 and we would like to work with the Committee to ensure that this legislation effectively achieves its intended goals.

S. 3314

S. 3314 would require the Secretary of Veterans Affairs and the Appalachian Regional Commission to carry out a program of outreach for Veterans who reside in Appalachia. While the Department of Labor is not tasked with anything in S. 3314, we would like to provide information on our rural initiative.

VETS is developing an innovative national initiative that will allow us to greatly improve outreach to rural Veterans and provide them access to better programs, services and information, as well as connection to a wide variety of services. VETS understands that successful employment is inextricably linked to other quality-of-life issues, so this initiative will also offer access to these other important services. VETS has reached out to the Corporation for National and Community Service and Service Nation to create a partnership that will serve as the basis for this initiative.

Our goal is to begin a demonstration pilot in 2010 that will provide lessons on how VETS can create a scalable model for national roll-out.

The core service envisioned is for DOL VETS to work with existing non-government networks and state government organizations to launch a pilot program to reach Veterans. The outreach team may offer in-person, internet, and/or phone based intake for self -registration to schedule a volunteer visit. The volunteer team will contact the Veterans, check on how their careers are going, and if needed, making them aware of additional support available from DOL, and potentially other government organizations.

VETS intends to leverage capacity from Veteran Service Organizations and state and local based volunteer organizations to provide the outreach services. These volunteers will be directed and closely managed by the Federal Government through our state Director of Veterans' Employment and Training (DVET) and our Federal partners.

We believe this initiative complements the outreach efforts envisioned in S. 3314.

CONCLUSION

Every day, we are reminded of the tremendous sacrifices made by our servicemen and women, and by their families. One way that we can honor those sacrifices is by providing them with the best possible services and programs our Nation has to offer. Secretary Solis and I believe strongly that Veterans deserve the chance to find good jobs.

I again thank this Committee for your commitment to our Nation's Veterans and for the opportunity to testify before you. I would be happy to respond to any questions.

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RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO U.S. DEPARTMENT OF LABOR, VETERANS' EMPLOYMENT AND TRAINING SERVICE

*Question 1.* It has been suggested that services to Veterans could be improved by converting DVOPs and LVERs from state to Federal positions. What are your thoughts?

Response. Disabled Veterans Outreach Program specialists (DVOPs) and Local Veterans Employment Representatives (LVERs) currently provide employment services as part of an extensive Department of Labor (DOL) funded One-Stop Career Center system. We are not aware of any study that has been conducted that indicates that the employment services would be improved if the staff providing those services were Federal rather than State employees.

Such a change would be highly disruptive to the current service-delivery framework and fundamentally change the way employment services are currently delivered to Veterans. DVOPs and LVERS are integrated within the State's One-Stop Career Center system so that they can assist Veterans in accessing the full range of workforce services available at the State and local levels, consistent with changes made after the enactment of the Jobs for Veterans' Act (JVA), Public Law 107–288, in November 2002. As the emphasis has been on focusing the delivery of services at the State and local levels in order to link Veterans' employment services to State and local labor market needs, Federal staff lack experience and expertise in this area. In addition, considerable administrative challenges would need to be overcome to effectuate the conversion from State to Federal positions, including complications arising from the transition of employees from State to Federal pay and benefits structures. This change could also have considerable costs. Some specific considerations include:

- Transfer of Employees: Numerous personnel issues would have to be addressed. For example, there could be a significant number of DVOPs and LVERs who would not want to convert to Federal status since seniority is not transferable from State to Federal personnel systems.
- Salary Structure: Currently, each State sets its own pay scale. In many States, where the Federal pay grade is much greater than their associate State pay scale, fixing the DVOP or LVER pay scale to a particular entry grade level will most likely make these new Federal positions very attractive. However, in at least a dozen States, higher current State compensation levels would render Federalizing their positions unattractive to incumbents, and the conversion could result in the loss of employees unwilling or unable to accept less pay.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO U.S. DEPARTMENT OF LABOR, VETERANS' EMPLOYMENT AND TRAINING SERVICE

Secretary Jefferson, you have brought a level of energy and creativity to your job that I think is real benefit to Veterans. So I thank you for that and for working with my staff and me on my Veterans' employment bill. Since you were unable to read your testimony this morning, I would like to ask you a few questions about the Veterans' employment bill.

*Question 1.* What are some of the Veterans' employment hurdles that you are seeing within DOL-VETS?

Response. There are a number of hurdles that impact our Veterans in today's job market. Some of these are:

- While emphasis and attention on Post Traumatic Stress Disorder and Traumatic Brain Injuries are critically important to the care of our Service Members and Veterans, it has some spillover effects in the employment arena, specifically in terms of stigma. Some employers may be hesitant to hire a Veteran because of the mistaken belief that they may present management challenges or pose a risk to fellow employees.
- Many recent Veterans have seen multiple deployments to Iraq and Afghanistan, which has made it much harder for them to transition back into the workforce. Veterans are also playing catch-up with their peers in regards to networking and civilian workforce experience due to their time in the service. These shortfalls translate into difficulty in marketing themselves to employers.
- There may be a lack of knowledge by hiring managers of the value proposition of the Veteran. These managers may not realize how the military skill sets translate into the skills needed on the job.

*Question 2.* What best practices have you seen with regards to transitioning Veterans to the civilian job market? Where are the shortfalls?

Response. Among the best practices in helping Service Members' transition to civilian life are predictive assessments, mental peak-performance training, knowledge of current and future employment trends, stress reduction techniques, defining and communicating one's value proposition, creating a network, learning how to assimilate into a civilian work environment, and career/life planning.

In addition, the Department of Defense (DOD) and each of the military services strive to assist Service Members as they separate from active duty or demobilize and return to their civilian life and jobs. Active duty members participate in formal pre-separation counseling and transition assistance programs when they are preparing for discharge.

Through DOD's Transition Assistance Program (TAP), the Department of Labor (DOL) also helps returning Veterans learn how to market their unique skills and experience to potential employers. DOL provides the TAP employment workshops, which consist of comprehensive two and one-half day sessions where participants learn about job searches, career decisionmaking and current occupational and labor market conditions. Practical exercises are conducted in resume writing and interviewing techniques. Participants are also provided an evaluation of their employability relative to the job market and receive information on the most current Veterans' benefits. Components of an employment workshop include: career self-assessment; resume development; job search and interview techniques; U.S. labor market information; civilian workplace requirements; and documentation of military skills.

National Guard and Reserve commanders also provide information and assistance to their members when they demobilize, so their members know how and where they can receive help if they need it. DOL supports this effort through our participation in the Yellow Ribbon Reintegration Program.

The shortfalls in this area are the same as those described previously in the answer to question #1.

*Question 3.* What best practices have you seen within government agencies when it comes to hiring Veterans, especially those that are service-connected disabled? How could we expedite the hiring process to create more opportunities?

Response. The agencies with the most success in hiring Veterans have established a dedicated resource to this effort. All agencies covered under Executive Order 13518 have established Veteran Employment Program Offices.

A best practice is to make use of special noncompetitive hiring authorities such as the Veterans Recruitment Act (VRA) and the thirty percent or more disabled Veteran hiring authority. In addition, there are several resources available to provide work place accommodations for Veterans with disabilities, including:

- Job Accommodation Network (JAN): This DOL-funded program is the leading source of free, expert, and confidential guidance on workplace accommodations and

disability employment issues. JAN offers one-on-one guidance on workplace accommodations, the Americans with Disabilities Act and related legislation, and self-employment and entrepreneurship options for people with disabilities, including disabled Veterans and Service Members.

• Computer/Electronic Accommodations Program (CAP): This DOD program provides assistive technology and services to people with disabilities, Federal managers, supervisors, and IT professionals. CAP increases access to information and works to remove barriers to employment opportunities by eliminating the costs of assistive technology and accommodation solutions.

• America's Heroes at Work: This DOL outreach and anti-stigma campaign educates America's employers about the simple on-the-job accommodations and steps they can take to help Veterans with Post Traumatic Stress Disorder and Traumatic Brain Injury to excel in their careers. This program is the result of strong collaboration with DOD, the Department of Veterans Affairs, and other Federal agencies and stakeholders.

We defer to the Office of Personnel Management on the question of expediting the Veterans hiring process for positions within the Federal Government.

*Question 4.* How do you think rolling the grant programs for Conservation Corps and Energy employment would work within the confines of DOL-VETS?

Response. As we understand the Conservation Corps and Energy Employment sections of S. 3234, the Veteran Employment Assistance Act of 2010, we believe that both establish grant programs to the States. These appear to be similar in function to the grants currently awarded by the Department of Labor through the Jobs for Veterans State Grants programs. We would appreciate the opportunity to further discuss with your staff the similarities to current grants programs and the possible adjustments needed to the programs.

Chairman AKAKA. Dr. Jesse, if Senator Casey's bill were enacted today, do you believe the Department would be prepared to implement it? Or do you believe further guidance from the Nuclear Regulatory Commission would be required?

Dr. JESSE. Sir, I am sorry. I am not sure which bill that is.

Chairman AKAKA. Yes, this has to do with the Veterans Health and Radiation Safety Act of 2010, S. 3330.

Dr. JESSE. Sir, we do not have comments on that prepared.

Chairman AKAKA. All right. Thank you very much.

Now I am going to call on our Ranking Member for any comments he has.

## STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Mr. Chairman, I appreciate that. I apologize to our witnesses that I was a few minutes late. Traffic in Washington is a little unpredictable at about 9:30. I would ask that my opening statement be included in the record, and I will let the Chair go to others for questions. I prefer to wrap up.

Chairman AKAKA. Your statement will be included in the record. Thank you.

[The prepared statement of Senator Burr follows:]

PREPARED STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Good morning, Mr. Chairman. Welcome to our witnesses.

We have an extensive legislative agenda before us today—20 bills in total, one which I introduced last week along with Chairman Akaka, Senator Durbin, and Senator Burris—S. 3377.

This legislation would improve the Department of Veterans Affairs (VA) Multifamily Transitional Housing Loan program and direct the use of $48 million in previously appropriated money going forward.

The original loan program, established in 1998, was intended to encourage development of transitional housing coupled with supportive services.

However, it was considered too rigid by community providers, who wanted greater flexibility in the loan terms and greater freedom to provide other living options—such as permanent housing—within the project being financed.

Only one loan was actually made to Catholic Charities, who operates the St. Leo Campus for Veterans in Chicago, Illinois.

S. 3377 is based, in part, on St. Leo's experience in meeting its operational and resource challenges.

Specifically, my bill gives VA the authority to issue loans directly to community providers. The advantage of direct loans is the greater flexibility VA will have in customizing loans to meet providers' unique needs.

Mr. Chairman, last fall you and I agreed to work together to find a constructive use for the original $48 million that was appropriated for the homeless loan program twelve years ago. I was told then by the Congressional Budget Office that amending the original program was the only way to do it.

I look forward to working with you, Senator Burris, and other Committee Members as we move forward.

I'm going to spend the remainder of my statement, Mr. Chairman, talking about a problem that we seem to be discussing at every hearing . . . namely, this Administration's apparent lack of responsiveness for the Committee's oversight and legislative responsibilities.

First, a quick compliment. The Administration's testimony for this hearing was on time. I'm hoping it is the beginning of a new trend.

With that said, the testimony only has views on 9 of the 20 bills on today's agenda, with a promise to provide views on the others at a later time. Although I understand it's tough to clear views on bills introduced within the last week, I'm skeptical we'll get them anytime soon. Here's why:

Last October we had a hearing, like today's, on pending legislation. On the agenda was a bill proposing comprehensive improvements to end veterans' homelessness. We didn't get views on that bill until March.

Continuing . . . last month the Chairman and I sent a letter to Secretary Shinseki reminding him that we had yet to receive responses to 216 of the 347 questions submitted following the Committee's February budget hearing.

After VA's weekly updates that responses to our questions were imminent . . . and the latest communication was to expect answers by last Friday, May 14 . . . still, nothing. Rather, we received a letter from Secretary Shinseki stating that the questions are "under review" by the Office of Management and Budget.

We were also promised responses last Friday to questions submitted by Committee members after hearings on October 8, October 21, November 11, March 3, and March 24 . . . still, nothing in from the Administration.

Mr. Chairman, in a week or so, the Senate is expected to consider supplemental appropriations legislation that includes very important funding for our troops and veterans. I submitted several questions relevant to this legislation. Despite the urgent need for us to act quickly, the Administration still has not responded.

There are many other unanswered budget questions that bear directly on policy that is the subject of several of the agenda items today. Yet we have nothing.

We still have no 5-year plan from the Administration to end homelessness; no idea what legislative authorities VA thinks it needs to accomplish that goal; and no idea how VA's budget request for next year and the advance year of 2012 fits within the overall plan.

Mr. Chairman, we are completely adrift here. This Committee cannot conduct its oversight and legislative functions without full cooperation from the Administration. We're talking about programs to improve the lives of veterans.

Clearly, voicing our concerns over these issues hasn't worked . . . . I'm committed to working with you, Mr. Chairman, in finding a solution because we simply cannot do our jobs adequately without the VA's full cooperation.

Thank you, Mr. Chairman.

Chairman AKAKA. At this time let me call on Senator Murray for any comments or questions she may have.

**STATEMENT OF HON. PATTY MURRAY,**
**U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Well, Mr. Chairman, thank you very much. Before I ask questions, I do want to talk for a minute about a bill that is before the Committee this morning. It is the Veteran Employment Assistance Act of 2010, and Secretary Jefferson just spoke to

the issue of high unemployment for men and women who have been serving us in Iraq and Afghanistan.

We are seeing a lot of our Nation's most dedicated and disciplined workers coming home, and they cannot find a job. They do not have an income to provide stability and do not have work that provides critical self-esteem and pride as they transition home. So, last month I introduced the Veteran Employment Assistance Act to help those veterans transition from the battlefield into the working world.

It is a bill that is really designed to make sure that our veterans do not have to go from fighting to keep us safe to fighting just to get an interview, which is what I heard from many of them as we spoke. It includes new business opportunities, it expands some of our existing programs, and I think really builds a bridge for our veterans into family-wage jobs. It does include an expansion of the Post-9/11 GI Bill to include job training and apprenticeship programs. This is something our veterans are telling me is very important to them.

In this bill we set up a Veterans Business Center within the Small Business Administration so veterans can begin to get some skills and capital to begin to build their own small businesses. We expand some innovative programs like the Conservation Corps Program in Washington State, and we provide our National Guard soldiers with the transition they deserve at a time when they are seeing repeated service in Iraq and Afghanistan, which is hindering many in their ability to keep a job or get a job when they return.

I think this is really an important bill right now as our economy is beginning to turn. I think we have got to take some very real comprehensive steps to make sure that the men and women who served us are getting jobs and employment as they come home and are part of our economic recovery as well.

This is a bill I have worked long and hard on, and I really appreciate your including it today, Mr. Chairman. I want to thank Senators Mark Begich and Sherrod Brown, who are cosponsors, and I look forward to working with you to get it through the Committee.

Secretary Jefferson, I want to ask you about it today and to ask you what you are hearing regarding some of the hurdles that our veterans are seeing as they come home and try to get a job back in the civilian world.

Mr. JEFFERSON. Senator, first let me just say that this is a very helpful bill and a bill that is very timely—the fact that it provides additional skills for veterans, the fact that it promotes entrepreneurship and the opportunity for veterans to create their own businesses, and also it promotes increased hiring by employers. I just wanted to say up front that we strongly support the goals of this legislation.

We hear a lot of things from veterans. One of the things first is that their preparation for transition to meaningful careers after leaving the service needs to be enhanced, and that is one of the reasons that, for the first time in 17 years, we are completely modernizing and transforming our Transition Assistance Program and making the emphasis there on acceleration.

A second thing that we are doing is we are working to change the cultural conversation in this country so that employers are

aware of the tremendous benefits that veterans have to offer. I am not sure, Senator, if you and the other members have had the privilege of seeing the last March issue of *Fortune* magazine, but it says, "The new face of business leadership in America," and it is a veteran. We are engaging with major organizations such as Fortune to tell that story.

We are also doing significant engagement with employers and business associations. This afternoon, for example, we are speaking to Business Executives for National Security. One of the major associations representing the top CEOs in America want to help veterans and servicemembers, and we are going to talk to them about why they should hire a veteran, how to hire a veteran. So, we want to form a partnership with them.

So we have a lot of things happening. Veterans want access to meaningful careers. They want preparation for those careers. They want to have the skills and the training so once they obtain those careers they are retained and they are assimilated into that new culture. We want to work with you and all of the Members on this Committee and your staff to look at ways that we can maximize the impact of this bill.

Senator MURRAY. I really appreciate that, and I have to say that, having worked on this bill along with a lot of veterans and hearing their stories, I think we incorporated into our legislation a lot of things we can do legislatively to help them. I am looking forward to its passage.

I agree with you that culturally we need to see a change, too. I was astonished at how many veterans told me that they leave the word "veteran" off their resume today because they believe their resume goes to the bottom of the stack, which is so disheartening to me.

Mr. JEFFERSON. Yes.

Senator MURRAY. They have tremendous skills, and oftentimes they do not know how to write their skills on a resume or they are worried that an employer will not hire them. And I hope to help create a culture for them to be able to transition and write their skills so the business world sees them, but more importantly so the business world recognizes the tremendous skills they have.

Mr. JEFFERSON. Senator, if I may say, there are three specific things that you just alluded to or mentioned specifically in your comments which are exactly what we are doing and are exactly what needs to be addressed.

The first you talked about was preparation—having them be able to produce cover letters and resumes that get them in the door. That is one.

Number 2 relates to the conversations we are having this afternoon with Business Executives for National Security, the relationship with *Fortune* magazine, changing the cultural conversation so CEOs are aware of the value of hiring veterans.

The third is something we are doing next month: developing a relationship with the Society of Human Resource Managers—speaking at their national conference where there will be, I believe, 10,000 human resource professionals to communicate to about the value of hiring a veteran, how to find veterans, how to translate their resumes, and how to retain them once they are on board.

We look at all elements of the equation and make targeted interventions to obtain better results.

Senator MURRAY. Well, thank you. I am delighted to work with you on that.

Mr. JEFFERSON. We are excited about it, Senator. Thank you.

Senator MURRAY. Thank you very much.

Chairman AKAKA. Thank you very much.

Senator Brown?

**STATEMENT OF HON. SCOTT BROWN,**
**U.S. SENATOR FROM MASSACHUSETTS**

Senator BROWN OF MASSACHUSETTS. Thank you, Mr. Chairman. Mr. Chairman, it is good to be back, and thank you for your leadership once again. I will be bouncing back and forth. I have a couple of other hearings to attend, but I wanted to come and obviously support you and the efforts you are continuing.

Mr. Pamperin, much of today's hearing is about increasing benefits for our veterans, and I am wondering if you could just tell me what benefits you feel might be at risk at this point in time. Any specific issues we need to focus on that we are missing or that are falling through the cracks?

Mr. PAMPERIN. Benefits that are currently being delivered that might be taken away?

Senator BROWN OF MASSACHUSETTS. Right, things that you are saying, "You know what? We have got to keep our eye on this."

Mr. PAMPERIN. We would be glad to give you a more extensive response in the future. My concern is that the Nation clearly——

Senator BROWN OF MASSACHUSETTS. Can I interrupt just for a second? I may have kind of thrown that out there. I guess what I am concerned with is making better use of current law, things that we have in place that we may not be exhausting properly, we may not be getting the full benefit of. For example, in Massachusetts, we are very active in veterans issues. We have the Welcome Home Bonus. We have re-employment rights. We have anti-discrimination opportunities. We have a one-stop shop for all of our returning veterans pre- and post-mobilization.

Is there anything that we are doing or the veterans have now for benefits that you need my help on or the Chairman's help on to kind of push through the door back to the veterans?

Mr. PAMPERIN. Well, sir, taking off on Senator Murray's concerns and Mr. Jefferson's comments, clearly we have veterans preference, and I think to have that re-emphasized to people not only in the Federal Government but, again, something that honors the service of people who have served now for 8 years in conflict. Beyond that, I would ask that I be able to provide additional——

Senator BROWN OF MASSACHUSETTS. Well then, I will go to Richard. What I would like to get, with the Chairman's blessing, is if there is something you need help with; I would like to know that, too. It is great to implement new programs, but we have a lot of programs right now that are not being fully exhausted. So, if there are some that you are aware of and you say you need some congressional or senatorial support, please let us know through the Chairman, number 1.

Sir, did you want to add to that?

Mr. HIPOLIT. I just wanted to mention that the Secretary is very concerned right now about making sure our adjudication process works efficiently, and we are looking at various ideas to assure that veterans get their benefits as quickly as possible through the adjudication process. So, there may be ideas that come out of that review that we might need legislative help with. We would be sure to advise the Committee if that was the case.

Senator BROWN OF MASSACHUSETTS. I can tell you, as somebody who is a JAG, serving also in this new capacity and my prior life as well, one of the top efforts that our office works on is veterans benefits—trying to put a benefit with a veteran. And I have to be honest with you, the red tape is just unbelievable. For the average—I have been doing it 30 years. I am an officer now, and sometimes I pull my hair out. What about the Private Snuffy or, you know, the new sergeant that is back and has some very serious issues. Where do they turn and how? So I am kind of concerned about the process and how we are streamlining, updating, and cutting down the time, cutting down the anxiety, making sure—so that is kind of where I would like to focus.

Mr. Hilleman, if you could talk to me about—I know there are remote location issues in terms of providing VA benefits, VA services. Where does the VA stand on leveraging private sector support to improve access in those regions that really do not have it? I am sorry. Mr. Pamperin, do you have any knowledge on that?

Mr. PAMPERIN. If we are talking with respect to the claims process, we will be shortly providing the field with work sheets that they can take to their family physicians to provide the kind of medical evidence we need for evaluation purposes. If you are referencing outreach kinds of activities, we work very closely with the National Association of County Veterans Service Officers. They are a great source of assistance to claimants. The biggest disadvantage that they have is that typically they are not recognized as the power of attorney, so, therefore, we end up with privacy issues. But, generally speaking, getting the information out to them, again, working with the National Service Organizations, working with the Bureau of Indian Affairs with Indians out West of what kind of benefits they are entitled to are things that we are trying to do to expand the information flow to veterans.

We are also working closely with Veterans Health Administration to try and reduce the complexity and the burden of claims processing by leveraging, to the extent possible, the medical evidence we already may have since so many of the veterans are being cared for in our facilities. To the extent possible we wish to avoid the necessity of having to have them come in for examinations when the information we need to rate may very well be in their treatment record.

Senator BROWN OF MASSACHUSETTS. Thank you. I know my time is up. Thank you for jumping in and answering that.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Brown.

Now Senator Brown from Ohio.

**STATEMENT OF HON. SHERROD BROWN,**
**U.S. SENATOR FROM OHIO**

Senator BROWN OF OHIO. Thank you. Thank you, Mr. Chairman. Aloha and thank you for the work on all of this legislation we are talking about, particularly a shout out to Senator Murray for the Veteran Employment Assistance Act. We are all pretty incredulous when we see the barriers for veterans' employment, and we clearly need to do more. When I do hearings, particularly in Appalachia, but anywhere in my State—and the Chairman has been gracious enough to allow us to have an official hearing in my State—I am amazed each time at the difficulties that veterans too often face.

I want to talk for a moment about the Appalachian Outreach Improvement Act, the legislation I have introduced, S. 3314, that grew out of the hearings we did in—well, one in the Dover-New Philadelphia area of Ohio a couple of years ago, but more recently in Cambridge and eastern Appalachian Ohio. I am disappointed VA has not had the time to develop their comments for the hearings today about that bill. I look forward to figuring out how we can move on this.

It is straightforward. It would provide the authority to VA to form a partnership, in this case with the Appalachian Regional Commission, to help increase the number of veterans that get the benefits they are entitled to. The VA knows veterans, and ARC knows Appalachia. Putting them together makes sense. Half this Committee represents a swatch of Appalachia, an area that spans the southwestern counties of New York to the northeastern portion of Mississippi. The Ranking Member represents part of Appalachia, Senator Isakson from Georgia, Senator Wicker from Mississippi, Senator Graham. Senator Rockefeller probably knows more about veterans in Appalachia than anyone. Senator Specter, Senator Webb, and I also represent parts of Appalachia.

These Senators can attest to the testimony I heard at our Committee field hearing last month from Dr. Rich Greenlee of Ohio University. He is a veteran. He is dean of Ohio University's Eastern Campus in Belmont County on the Ohio River across from West Virginia. He testified, "Military veterans have been found to be less likely than the general population to seek mental health services due to perceived stigma. Combine this with the Appalachians' resistance to seeking mental health treatment or help of any kind, and the combination of the two cultures—one military, the other regional affiliation—and it is highly unlikely that Appalachian veterans will voluntarily seek help." We can look at the numbers of veterans we estimate in Appalachian Ohio, and the number who have sought any kind of help or even registered—gone into local veterans service offices or registered with the State. We know that situation all too well.

I look forward to working with the Committee on improving the percentage of VA-eligible veterans who apply for and receive VA benefits. In addition to Appalachian areas—and that is why this is larger than just Senator Burr's State and my State and the other Senators on this Committee I mentioned. My home State has, of course, non-Appalachian rural areas like Wapakoneta and Piqua, industrial centers like Dayton and Cleveland. Veterans live in downtown Columbus. They live on Main Street in Defiance. They

live on farmland in Ashtabula. But that begs the comment that we cannot just have a one-size-fits-all approach to our outreach to veterans who have come from many different backgrounds and live in very different communities. We can just look on this Committee, from Honolulu, HI, to Holyoke, MA, to Hanford, WA, to Hebron, OH, to Hamilton, AK, to Hilton Head, NC, where every one of these communities is different. This one-size-fits-all outreach does not seem to be working so well, as we need to embrace veterans, whether it is for her small business program or for anything else that we need to do for education or health care benefits.

So, I guess my only question for Mr. Pamperin is: should outreach be a line item? Or maybe more generally, what do you suggest we do? You said you have not had time to look at my legislation. That is fine for now. But what do we need to do to have better outreach? I know you have a Web site. I know you do some one-size-fits-all national things. But how do we do this in a way that really does reach these communities around this table and around this country?

Mr. PAMPERIN. Sir, I am pleased to let you know that the Secretary has created a Benefits Assistance Service that stood up just this month whose sole function is outreach and the coordination of outreach. And I will clearly take this back, you know, as a concern of the Committee to make sure that we do the kind of focused outreach that is needed based upon geography, cultural make-up, or traditions.

Chairman AKAKA. Thank you very much, Senator Brown.

Senator Burr?

Senator BURR. Thank you, Mr. Chairman.

Mr. Jefferson, I will show you the same love today OMB provided you to come to this hearing.

Mr. JEFFERSON. How are you doing, sir?

Senator BURR. Mr. Pamperin, in your testimony, you indicate VA would be submitting a legislative proposal in the near future. Now, I did not see anything in your description of it relating to homelessness, so let me turn to Dr. Jesse. Does the administration require legislative changes as part of its overall homelessness program?

Dr. JESSE. I do not think so at this point. Right now, as you know, homelessness is one of Secretary Shinseki's major initiatives. It is probably his top initiative, not just to reduce homelessness but to eliminate it. And there are significant forces being marshaled toward that end, both at very high levels within his office as well as within the VHA, to address homelessness, not just about providing housing but for trying to address the fundamental issues related to that.

Senator BURR. Are those in the fiscal year 2011–12 advance funding requests anticipated or required changes in the law to release funding for homeless veterans' programs?

Dr. JESSE. From my perspective, I do not see that it does at this point, but I do not think we should preclude asking for that.

Senator BURR. Can anybody tell me when the Committee would be wise to expect legislation to come from VA?

Mr. HIPOLIT. I was in touch with the Office of Management and Budget yesterday, and they are assuring us they are going to clear our bill for submission.

Senator BURR. I hope they do better than they did with Mr. Jefferson's testimony today.

[Laughter.]

Mr. HIPOLIT. They are telling me they expect to clear it today, in fact, so hopefully we will be getting it up very shortly.

Senator BURR. Dr. Jesse, in our second panel, Mr. Weidman will testify in support of my bill, but he had some criticism of the Office of Management and Budget, arguing that OMB's permanent bureaucracy has been opposed to the program from the onset. What has been your experience as it relates to the oversight of the program?

Dr. JESSE. I apologize, but I do not think I can really speak to that.

Senator BURR. Well, have you had an opportunity to look through the bill that I have introduced with Senator Akaka, Senator Burris, and Senator Durbin?

Dr. JESSE. We do not have comments cleared for that, sir.

Senator BURR. Do you have any personal comments you would like to make other than the comments of the Office of Management and Budget?

[Laughter.]

Dr. JESSE. Well, I——

Senator BURR. Let me just say I wholeheartedly endorse the Secretary's commitment to homelessness. Let me tell you, OMB does not give a shit about homelessness. If they did, this problem would be solved. The Secretary is genuine and passionate about ending it. But if OMB is going to design the program, it is not going to get solved.

I am not soliciting an answer. I am not asking a question. I am making a statement that I hope all of you let penetrate. If we are going to solve this problem, we cannot wait for somebody down the street to come up with another bureaucratic solution to a problem that keeps veterans on the streets. We can go home and feel good about the fact that we put a shelter over their head. But if OMB is not willing to release the program to work with the wrap-around services, provide that veteran everything they need to end permanent homelessness, it is not going to happen.

So, you know, let us quit fooling ourselves. You might send to the Secretary—he is the only one that can have a conversation with OMB. If OMB is the one that we need to pull up here and not VA, then, for goodness' sakes, tell the Chairman and we will start pulling OMB in.

Mr. Pamperin, in a recent opinion, *Posey* v. *Shinseki*, a judge from the U.S. Court of Appeals for Veterans Claims provided this observation about what happens when an individual tries to appeal to the court, but mistakenly sends his or her notice of appeal to a VA office: "It has become clear to me that VA somewhat routinely holds correspondence from claimants that it determines sometime after receipt are Notices of Appeal to the court. As a result, in far too many cases the court receives the Notice of Appeal from VA only after the 120-day appeal period has expired, permitting the Secretary then to move to dismiss the appeal for lack of jurisdiction."

First of all, can you give us an idea of how frequently a Notice of Appeal mistakenly is sent to the VA rather than the court?

Mr. PAMPERIN. No, sir. I am aware that it does happen periodically, but in terms of a hard number, I do not have such a number.

Senator BURR. What policies are in place for dealing with a Notice of Appeal that has mistakenly been sent to the VA?

Mr. PAMPERIN. The letter is to be returned to the veteran and advised as to where he should file it.

Senator BURR. Has a written guidance been provided to VA's staff on these policies? And if so, can the Committee have a copy of that written policy?

Mr. PAMPERIN. Sir, I do not know specifically, but I will bring your request back and we will provide you with the instructions that have been provided.

[Items were not received by the Committee by the deadline for printing.]

Senator BURR. Do you know if VA staff is following these policies?

Mr. PAMPERIN. The VA routinely conducts site surveys of its regional offices—each regional office once every 3 years—and an assessment of the performance of the office in terms of compliance with instructions is included in that. I do not recall in the last couple-3 years a specific reference that that has been identified as an issue.

Senator BURR. Last question, Mr. Chairman.

Do you think that more should be done to protect the appeal rights of veterans who mistakenly send their notice to the VA versus to the court?

Mr. PAMPERIN. Yes, sir. I think that there are legitimate occasions when the 120-day hard and fast rule needs to be adjusted.

Senator BURR. Well, given that you cannot cite an instance lately, I will be more than happy to supply you with some instances that you can look back at.

I thank the Chair.

Chairman AKAKA. Thank you very much, Senator Burr.

Senator Begich.

**STATEMENT OF HON. MARK BEGICH,**
**U.S. SENATOR FROM ALASKA**

Senator BEGICH. Mr. Chairman, I am just going to make some general comments. Then I have four questions which I do not think you will be able to respond to right now, but I want to put them in, because I have to preside here in a few minutes. They are in regards to a piece of legislation that Senator Grassley and I introduced, S. 3325, which is on the issue of co-payments for telehealth and telemedicine.

Obviously, there is a reason why we have introduced it. In Alaska, we see more and more individuals—not only veterans but in other areas—utilizing telemedicine and telehealth as a way to do prevention as well as kind of maintenance on some of the health care that is necessary. So what we have found, at least some of our information—I want to give these questions to you so you can get back to me, whoever the right person is. And, Ray, I wanted to get to some employment issues here, but I do not have them right now.

Mr. JEFFERSON. I could always talk about our rural veterans outreach initiative.

Senator BEGICH. I know. I know, and I greatly appreciate your work there.

So, let me ask if I can—again, if you can answer these, great; if you cannot, I would like you to take them for the record and get back to me. So, what is the plan for the VA in expanding their telehealth/telemedicine program? I want to get a sense of what that plan is now and into the future. That is the first question.

Second, what is the average co-payment for someone who does currently use telehealth services? I do know this: in rural communities, if they can use telehealth/telemedicine, the odds are they will not then fly and pay $1,000 to get from a village or a small community to an area where they need those services. They can use the technology that is available. So I want to get an understanding of that.

What data points or what information and studies have you done in relationship to—I am familiar with some, so I wanted to see if you have some in your own reports—in regards to the costs of a co-pay or someone who is paying a co-pay using telemedicine or telehealth versus someone who is not. In other words, what is the variation of utilization? I think I can answer just based on some Indian Health Service systems that use telehealth, and it has been a positive step, but I am curious if the VA has done something.

And then what of the rural veterans utilize—when I say rural America, of course, including Alaska—telehealth and telemedicine? And what are the outreach efforts in getting folks to understand how to utilize that system?

I think we are in a unique situation in Alaska because telecommunications is a critical piece and literally life-and-death linkage that we have for villages where you cannot just get in the car and drive down the street and find a hospital or a clinic. So, we use it in a very unique way, in some cases pioneered some of this technology through the VA—actually it was through the Indian Health Service where we have really pioneered some of it. So, I am curious if any of those questions can be answered now. If not, I do not want to burn up the time, and I do not want you to have to get in trouble with OMB, whatever that rule is.

[Laughter.]

Dr. JESSE. Actually, I do not think any one of those questions can be answered briefly, but we would be happy to come and brief you in the future or to submit for the record, if you would prefer.

Senator BEGICH. If you could submit for the record, then we can drive from there. In other words, a lot of this is kind of data points of trying to get an understanding of where we are going.

[Items were not received by the Committee by the deadline for printing.]

Dr. JESSE. I will say that we are very committed to the expansion of telehealth. As a cardiologist in my prior job, we actually extensively used home monitoring. I know that through a series of recalls of implantable devices a couple years ago, we estimated that we saved 25,000 office visits through the ability to monitor patients at home using the home-based monitoring for their implantable devices.

Senator BEGICH. You have just given the reason why the VA should support our legislation, because less co-pays or no co-pays mean people utilize it, which ultimately saves on the bottom line. We read more recently, especially on DOD, the Defense Department, what they are seeing in increased costs of health care. So, the more we can utilize this technology—it is a powerful tool, I think, and potentially cost saving, which you just gave a great example.

Dr. JESSE. We agree fully. Dr. Petzel, the Under Secretary, one of his key initiatives is the expansion of telehealth. So it is a matter of getting the numbers down, the specific numbers, which I cannot give you right now.

Senator BEGICH. OK. If you could get those, that would be great. Again, for the record it would be great, and then we will drive it from there. If we think we need additional data, we will ask. Then, obviously, we are anxious to get the VA's opinion on this legislation sooner than later: how they will view it and if they have concerns with it. We want to work through those.

With my last few seconds, Ray, I just want to say the piece of legislation that Senator Murray is the primary sponsor on, I think some of that, as you read through it, I know you will see some of our efforts from field hearings that we had in Alaska; you will kind of see that trickle through.

Mr. JEFFERSON. Yes.

Senator BEGICH. And I hear more and more about the job classification issue, which I think has some huge potential in making sure that people who are in the military who are spending 6, 8, 10 years, becoming great electricians, that we can get them doing the job right when they walk out the door as an example, or a paramedic. So I just am anxious, and I know Senator Murray is as a prime sponsor of that legislation, to be working with your office on seeing how to accelerate that.

Mr. JEFFERSON. Yes, sir.

Senator BEGICH. I do not know if you have any——

Mr. JEFFERSON. Well, we are very excited about that, too, sir, and there are two new initiatives which we are going to be launching that speak exactly to the points you raised. The first is an initiative that we are doing with the Job Corps. That will be for veterans 20 through 24. It will help them—it will provide a fully funded, all-expense-paid, transportation-paid program where they will get training, they will get a license or certificate—a credential. They will get a job, and they will get up to 2 years of post-employment support to make sure they are retained in that job.

Senator BEGICH. Excellent.

Mr. JEFFERSON. That is one of our interventions for the population of veterans with the highest unemployment. We are very excited about that.

And, second, although we were not mentioned in the rural outreach component of the bill, we also have a major new initiative which we are calling our Rural Veterans Outreach Initiative. We are very excited about that. What we have learned from this Committee and what we have seen from the trip to Alaska, really illuminated our development of the concept. We are basically going to be partnering with the Corporation for National Community Serv-

ice, partnering with ServiceNation, leveraging veteran volunteers in rural America, training them to get boots on the ground in rural America and educate veterans on the programs and the services that they have available to them. And as we develop that delivery system and broaden it nationwide, we would like to see how we can work with our partners and close friends at VA to create more services and make it a more robust program.

Senator BEGICH. Thank you very much, Ray. And as you get those items ready to be kicked off, obviously we would love to know.

Mr. JEFFERSON. Yes.

Senator BEGICH. I know Senator Murray would love to know how those kick off, and for me personally how we can be supportive of those efforts at reaching out to the unemployed veterans of our country.

Mr. JEFFERSON. Yes. We look forward to working with you, and we will need your assistance.

Senator BEGICH. Thank you.

Mr. Chairman, I apologize. I have to go preside, but I really appreciate the opportunity to comment on the legislation. Thank you.

Chairman AKAKA. Thank you very much, Senator Begich.

Secretary Jefferson, I want to thank you for your offer to work with the Committee to improve some of the provisions and the measures before us this morning, and I want you to know that I intend to take you up on that as we proceed through the legislative process.

Mr. JEFFERSON. Yes, sir.

Chairman AKAKA. I want to thank all of the witnesses on our first panel for being here this morning. Thank you very much.

Now I would like to welcome the witnesses on our second panel: Ian de Planque, Deputy Director, Veterans Affairs and Rehabilitation, at the American Legion; Tom Tarantino, Legislative Associate for Iraq and Afghanistan Veterans of America; Eric Hilleman, National Legislative Service Director, Veterans of Foreign Wars; and Rick Weidman, Executive Director for Policy and Government Affairs at the Vietnam Veterans of America. He is accompanied by Alan Oates, Chair of the VVA National Agent Orange and Toxic Substances Committee. And, Mr. Tarantino, like Secretary Jefferson on the previous panel, because of the lateness of IAVA's submission of your testimony, you will not be permitted to present testimony, but I will provide Members the opportunity to ask you questions.

Mr. de Planque, will you please begin with your testimony?

## STATEMENT OF IAN DE PLANQUE, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. DE PLANQUE. Good morning. Thank you, Mr. Chairman, Ranking Member Burr, and Members of the Committee. I want to thank you on behalf of The American Legion for the opportunity to provide comments on the broad spectrum of legislation before the Committee today. This legislation offers important help to veterans in many areas.

S. 1939 and 1940 provide further aid to our veterans of the Vietnam War and their children.

Legislation such as S. 3314 and S. 3325 will provide much needed outreach and benefits to the growing community of rural veterans in America and veterans in non-traditional urban areas.

S. 3348, S. 3368, and others will help veterans and their families in dealing with the complexities and the sometimes confusing system of veterans benefits. And there are many other worthy pieces of legislation on the agenda today.

Importantly, a bill stands before the Committee addressing one of the most critical issues facing many veterans today: the issue of unemployment. S. 3234, the Veterans Employment Assistance Act of 2010 is a comprehensive bill that will address education, employment, and training needs. Iraq and Afghanistan veterans face unemployment levels of as high as 30 percent, with up to a quarter million unemployed veterans from those two theaters combined.

While the landmark Post-9/11 GI Bill provided many important educational benefits to American veterans, some areas of learning were left behind, which this legislation should remedy. Previously, important training such as vocational schools, apprenticeships, and on-the-job training programs were not given the same equity as institutions of higher learning. These programs fulfill an equally vital role in job preparedness.

Furthermore, the legislation calls for small business training and counseling and creates pilot programs and otherwise seeks to help veterans market their military training in the civilian sector.

The American Legion believes that the skill set a veteran receives through military training with the concurrent work ethic, quality standards, and determination for mission accomplishment make the American veteran the most highly-qualified candidate for employment. These servicemembers have already demonstrated their abilities to master any task, and any civilian employer should expect no less.

No veteran should face unemployment given their training and history of service. That veterans face such high unemployment numbers is deeply troubling. The American Legion has stressed that more must be done to find jobs for these veterans, particularly within the Government agencies, such as the VA, where overall veteran employment is roughly 39 percent.

In areas such as the National Cemetery Administration, who recently stated that they have fulfilled 100 percent of their outside contracts under the American Reinvestment and Recovery Act to veteran-owned businesses, many of those to disabled veteran-owned businesses, we can find a model for what should be going on for our veterans. The American Legion applauds this initiative and encourages finding more ways for other agencies to follow that model.

Several pieces of legislation were submitted at late deadline. In order to properly address these pieces of legislation, we would ask to submit testimony on these bills for the record.

Thank you for allowing the American Legion to provide testimony today, and we would be happy to answer any questions you or the Committee may have.

[The prepared statement of Mr. de Planque follows:]

PREPARED STATEMENT OF IAN DEPLANQUE, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman, Ranking Member and Members of the Committee: Thank you for this opportunity for The American Legion to present its views on the broad list of veterans' legislation being considered by this Committee.

S. 1780: HONOR AMERICA'S GUARD-RESERVE RETIREES ACT

This bill would deem certain service in the Reserve components as active service for purposes of laws administered by the Secretary of Veterans Affairs. Specifically, this bill addresses National Guard and Reserve component servicemembers and their the classification of service under Title 10 of the United States Code for the purposes of their status with the Department of Veterans Affairs (VA).

The American Legion has no position on this legislation.

S. 1866

This bill provides for the interment of the parents of certain deceased servicemembers. The bill would address the eligibility of parents of certain deceased veterans for interment in national cemeteries. This bill would apply to servicemembers who at the time of the parent's death do not have a spouse, surviving spouse, or child who have been interred, or who, if deceased, would be eligible to be interred, in a national cemetery.

The American Legion has no position on this legislation.

S. 1939: AGENT ORANGE EQUITY ACT OF 2009

The purpose of this bill is to amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam. As frequently stated in the past, The American Legion strongly supports the extension of presumption of exposure to Agent Orange for veterans who served on naval vessels located in the territorial waters of Vietnam (known as Blue Water Navy veterans) but did not set foot on land in Vietnam.

The Institute of Medicine (IOM), in Veterans and Agent Orange: Update 2008, specifically stated that the evidence it reviewed makes the current definition of Vietnam service for the purpose of presumption of exposure to Agent Orange, which essentially limits it to those who actually set foot on land in Vietnam, "seem inappropriate." Citing an Australian study on the fate of the Agent Orange contaminant TCDD when sea water is distilled to produce drinking water, the IOM committee stated that it was convinced that such a process would produce a feasible route of exposure for Blue Water veterans, "which might have been supplemented by drift from herbicide spraying." (See IOM, Veterans and Agent Orange: Update 2008, p. 564; July 24, 2009.) The IOM also noted that a 1990 Centers for Disease Control and Prevention study found that non-Hodgkin's lymphoma, a classic Agent Orange cancer, was more prevalent and significant among Blue Water Navy veterans. The IOM subsequently recommended that, given all of the available evidence, Blue Water Navy veterans should not be excluded from the group of Vietnam-era veterans presumed to have been exposed to Agent Orange/herbicides.

The American Legion submits that not only does this latest IOM report fully support the extension of presumption of Agent Orange exposure to Blue Water Navy veterans, it provides scientific justification for this current legislation, which admirably seeks to correct the grave injustice faced by Blue Water Navy veterans. The American Legion strongly supports this legislation.

S. 1940

The purpose of this bill is to direct the Secretary of Veterans Affairs to complete, and report to the congressional veterans' committees on, a study of the effects on children of their parents' exposure to herbicides used in support of U.S. and allied military operations in the Republic of Vietnam during the Vietnam era, to include but not limited to multiple sclerosis and asthma.

The American Legion's longstanding position with regard to the health effects of herbicides such as Agent Orange has been to aggressively facilitate an understanding of these effects and help ensure that veterans and their families are properly treated and compensated for the effects of such exposures. With regard to the effects of a parent's exposure on their offspring, The American Legion acknowledges the progress to date.

Namely, in 1996, President Clinton and VA Secretary Jesse Brown asked Congress to pass legislation providing health care, monthly disability compensation, and vocational rehabilitation to the children of Vietnam veterans suffering from the seri-

ous birth defect spina bifida, which has been linked to the veterans' exposure to Agent Orange. Congress passed the legislation, marking the first time our Nation had ever compensated the children of veterans for a birth defect associated with their parent's exposure to toxic chemicals during their military service.

In 2003, Congress, with the support and endorsement of The American Legion, authorized with the passage of the Agent Orange Veterans' Disabled Children's Benefits Act, the expansion of these benefits to children with spina bifida of certain veterans who served at or near the demilitarized zone in Korea between September 1, 1967 and August 31, 1971, because Agent Orange is known to have been sprayed in that area.

Only additional scientific and medical studies, though, can determine the full ramifications of the effects on children of their parents' exposure to herbicides. Studies of the type called for in this legislation can help establish the associations necessary to allow the VA to provide entitlement to all benefits due to the child or children of any veteran exposed to a Vietnam-era herbicide agent, in any location, including those outside of Vietnam, where herbicides were tested, sprayed, or stored.

The American Legion supports this legislation.

S. 2751

This bill would designate the Department of Veterans Affairs medical center in Big Spring, Texas, as the George H. O'Brien, Jr., Department of Veterans Affairs Medical Center.

The American Legion has no position on this piece of legislation.

S. 3035: VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010

Under the provisions of the bill, VA would establish an official VA Polytrauma Rehabilitation Center in the Northwestern area of the United States within Veteran Integrated Service Network (VISN) 19. Additionally, a report on the Polytrauma Rehabilitation Center would determine the levels of care of the VA medical centers in VISN 19, the differences of Traumatic Brain Injury (TBI) treatment between urban and rural areas, as well as a study to determine if TBI conditions are worsened by living in an urban environment.

VA designed Polytrauma Rehabilitation Centers to address the many unique and multiple injuries faced by servicemembers in Iraq and Afghanistan who are surviving improvised explosive device (IED) blasts. VA Polytrauma Rehabilitation Centers provide treatment through multi-disciplinary medical teams including Cardiologists, Internal Medicine, Physical Therapist, social work and Transition Patient Case managers and much more specialty medical service areas, to help treat the multiple injuries. Currently, VA maintains four VA Polytrauma Rehabilitation Centers in Richmond, VA; Minneapolis, MN; Palo Alto, CA and Tampa, FL. In February 2010, VA also announced funding for a new Polytrauma Center to be built in San Antonio, TX. As advances in battlefield medicine and evaluation continue to evolve, it is also important that VA continue to expand its network of care closer to the veteran and his or her family's community.

The American Legion has not historically advocated for specific locations for VA medical centers, Community-Based Outpatient Clinics (CBOCs), or Vet Centers due to competing funding and state interests. However, The American Legion's Resolution 220 on rural health care clearly urges VA to improve access to quality primary and specialty health care services for veterans living in rural and highly rural areas. Furthermore, The American Legion believes that veterans should not be penalized or forced to travel long distances to access quality health care based on where they choose to live.

The American Legion has long advocated for improvements for one of the "signature wounds" of Iraq and Afghanistan, Traumatic Brain Injury. The American Legion supports the provision in this bill for research and evaluation of TBI treatment between the urban and rural areas. Further, The American Legion urges this Committee to examine the possibility of including and funding additional areas of TBI study and emerging treatments in the private sector such as Hyperbaric Oxygen Therapy (HBOT) and the Mt. Sinai Hospital's Brain Injury Screening Questionnaire.

The Hennepin County Medical Center in Minneapolis, MN, conducted a study on Hyperbaric Oxygen treatment for Patients with Traumatic Brain Injury in January 2010. This study found a significant benefit from hyperbaric oxygen treatment to improve brain metabolism and its ability to recover from injury. The findings were recently published in the Journal of Neurosurgery. Additionally, the study showed that cells need oxygen to fuel metabolism for cellular growth and repair. After a Traumatic Brain Injury, there's a direct correlation between clinical outcome and the degree to which a brain's metabolism is restored. Dr. Gaylan Rockswold, who

conducted the study stated. "In previous research we learned that the brain's energy is improved and maintained with hyperbaric oxygen treatment, but this study confirms that hyperbaric oxygen treatment has a major impact in terms of increased energy production." The American Legion encourages this Committee to work closely with the medical community to ensure our Nation's veterans continue to receive the highest in quality and type of care for TBI.

Additionally, Mt. Sinai developed a Brain Injury Screening Questionnaire. DOD's TBI screening questions were initially developed by the Defense and Brain Injury Center (DVBIC), modified by VA and refined and adopted by DOD. In April 2007, VA began implementing similar TBI screening questionnaires for Iraq and Afghanistan veterans to be administered by health care providers at VA Medical Center facilities. DOD and VA both use a four-question test but Mt. Sinai uses 100 questions through the Brain Injury Screening Questionnaire. The American Legion remains concerned that the private sector uses a 100 question screening test while DOD and VA only use a four-part questionnaire.

The American Legion also recommends examining the establishment of a toll-free number for servicemember and veteran patients, their families, clinicians, veteran service organizations and other Federal, state and local organizations to ask questions or receive literature on evaluation, diagnosis and treatment of TBI. In addition, within this call center, a TBI registry could be created to track the statistics of servicemembers afflicted with TBI and those servicemembers from DOD and VA who are receiving treatment.

S. 3107: VETERANS COMPENSATION COST OF LIVING ADJUSTMENT ACT OF 2010

The purpose of this bill is to increase, effective as of December 1, 2010, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The amount of increase shall be the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2010.

The American Legion supports this annual cost-of-living adjustment in compensation benefits, including dependency and indemnity compensation (DIC) recipients. It is imperative that Congress annually considers the economic needs of disabled veterans and their survivors and provide an appropriate cost-of-living adjustment to their benefits, especially should the adjustment need to be higher than that provided to other Federal beneficiaries, such as recipients of Social Security.

S. 3192: FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010

The purpose of this bill is to address recent rulings by the courts regarding equitable tolling and how that affects veterans filing claims within the court system. Equitable tolling is a doctrine or principle of tort law: a statute of limitations will not bar a claim if despite use of due diligence the plaintiff did not or could not discover the injury until after the expiration of the limitations period.

Under 38 U.S.C. § 7266(a), an appellant has 120 days from the date the notice of a final decision of the Board of Veterans' Appeals (BVA) is mailed to file a notice of appeal (NOA) to the United States Court of Appeals for Veterans Claims (CAVC). From 1998–2008, previous precedential decisions of the United States Court of Appeals for the Federal Circuit (Bailey) had permitted equitable tolling by the CAVC for the 120 day time period under § 7266(a). The Supreme Court, however, in *Bowles* v. *Russell*, 551 U.S. 205 (2007), made it clear that the timely filing of a NOA in a civil case is a jurisdictional requirement and that courts have no authority to create exceptions. The Supreme Court further concluded that only Congress can make such exceptions.

In *Henderson* v. *Shinseki*, the CAVC ultimately dismissed the veteran's appeal because he had missed the 120 day deadline by 15 days. The veteran argued that his service-connected mental disorder, rated 100 percent disabling, caused him to miss the deadline. While Mr. Henderson's appeal was pending at the CAVC, the Supreme Court rendered its decision in Bowles, in which it stated that "the timely filing of a notice of appeal in a civil case is a jurisdictional requirement," and thus cannot be waived. The Court also stated that it had no authority to create equitable exceptions to jurisdictional requirements.

On July 24, 2008, the CAVC ruled in a 2–1 decision that the holding in Bowles prohibited it from using equitable tolling to extend the 120-day appeal period set forth in § 7266(a). The CAVC determined that Congress had "specifically authorized" it to conduct "independent judicial appellate review" of the BVA, and that well-settled law established that its cases were "civil actions." Starting from that premise, the CAVC concluded that § 7266(a) was a notice of appeal provision in a civil case,

and that it was jurisdictional and could not be equitably tolled. Accordingly, the court ruled that the Federal Circuit's precedent in Bailey was effectively overruled, and it dismissed Mr. Henderson's appeal for lack of jurisdiction.

Mr. Henderson subsequently filed a timely appeal of the CAVC decision with the United States Court of Appeals for the Federal Circuit. On December 17, 2009, the Federal Circuit affirmed the decision of the CAVC dismissing the veteran's appeal for lack of jurisdiction.

The Federal Circuit decision in Henderson, citing the Supreme Court decision in Bowles, has made it quite clear that equitable tolling in veterans' appeals at the Federal court level is prohibited. Senator Arlen Specter (PA) recently introduced S. 3192, the Fair Access to Veterans Benefits Act, to require the CAVC to consider if a veteran's service-connected disability would have made it difficult or impossible for him or her to meet a deadline for filing an appeal.

Resolution No. 32, adopted by The American Legion at the 2008 National Convention, specifically supports legislation to extend the 120-day CAVC appeal deadline to one year following the BVA final denial of an appeal. Given the specific intent of this resolution, measures which would extend the period of time available for veterans to file with the CAVC are supported by The American Legion. Particularly in the case of certain veterans whose service-connected disabilities may impact their ability to timely file appeals to the court, measures such as this bill have the potential to positively impact the ability of those veterans to achieve justice within the system of benefits claims adjudication.

The American Legion supports this bill.

S. 3234: VETERANS EMPLOYMENT ASSISTANCE ACT OF 2010

The American Legion strongly supports S. 3234 and regards this comprehensive new bill as an important means of addressing the education, employment, and training needs of veterans. If enacted, S. 3234 would improve employment, training, and placement services furnished to veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom.

The problem is clear: the unemployment rate for all veterans of Iraq and Afghanistan stands at 14.7 percent, while for OIF/OEF veterans between the ages of 18 to 24 it is 30.2 percent. The total number of unemployed veterans of the two wars is about 250,000. This legislation would provide these veterans with the training and additional skills they need in order to acquire gainful employment in today's marketplace.

This bill contains several provisions that The American Legion has been advocating for some time. For example, under the current Post-9/11 GI Bill, vocational schools, apprenticeships and on-the-job training programs are not given the same equity as Institutions of Higher Learning (IHLs). But, not all veterans desire to attend IHLs. Many veterans prefer forms of employment that do not require a college degree and/or may require employment as quickly as possible for personal or family reasons. S. 3234 would expand GI Bill education benefits to include apprenticeship and training programs, so that veterans can get the licenses and certificates they need for new high-potential careers in an expeditious manner.

In addition, the legislation calls for small business training and counseling, and creates pilot programs to help veterans market their military training more effectively in the civilian sector. The Act also addresses training requirements for new Disabled Veterans' Outreach Program Specialists and Local Veterans' Employment Representatives, who play such an important role in helping veterans overcome employment barriers and become more marketable.

In sum, The American Legion strongly supports S. 3234, because it touches all the bases in addressing key challenges faced by unemployed and underemployed veterans. No mission is more critical at this time in our history—given the Nation's involvement in two wars and the uncertain economic situation—than enabling America's veterans to have a seamless transition from military service to the civilian workforce. Toward that end, The American Legion is committed to working together with Congress, Federal agencies and the private sector to ensure that America's veterans are provided with the highest level of service and employment assistance.

S. 3314

The American Legion supports this piece of legislation because it will serve to increase use of medical care services to those residing in the Appalachia Region. We also believe collaboration between both VA and the Appalachian Regional Commission will help with the seamless transition process as servicemembers return to their respective communities.

H.R. 2879, the Rural Veterans Health Care Improvement Act of 2009, would establish Rural Health Centers located in three regions of the country, to include the Eastern Region, Central Region, and Western Region. In addition, The American Legion's position on H.R. 2879 included an increase of the presence of these Centers due to the vastness of rural areas. We also stated that the reason for the increase included lack of access of medical facilities, lack of medical professionals, and the ability to address the issues of women veterans, as well as homeless veterans. In the case of this bill, we believe other Center(s) should be established to assist with accommodation of veterans residing in the Appalachia Region.

In contracting with public or private organizations to provide information, advice, and technical assistance, as stipulated in section (c) and (d) of the bill proposal, it is the contention of The American Legion that VA maintain proper oversight of each contract that provides medical care, utilization of facilities and resources, education of veterans' employment rights, and provision of technical assistance to veteran-owned businesses, to ensure veterans are represented as intended by order of the mission statement as set forth by President Lincoln; "To care for him who shall have borne the battle and for his widow, and his orphan."

S. 3325

The American Legion concurs with this piece of legislation and its proposal to prohibit collection of copayments for Telehealth or telemedicine. Further, it is The American Legion's contention that veterans should not be penalized due to their geographical residence preferences. Regarding the subject of copayments, it is the discretion of each VA Medical Center director to collect a copayment. As such, oversight should ensure that these copayments are assessed consistently and not subject to regional variations.

The American Legion supports the insertion of 1722B. Copayments: prohibition on collection for Telehealth or telemedicine visits of veterans into Chapter 17, Title 38.

S. 3368

The purpose of this bill is to provide the ability of legally designated representatives to sign claims on behalf of veterans or their dependent children eligible for benefits in certain circumstances such as when issues of legal majority, mental competency, and/or physical disability prevent the beneficiary from signing such forms themselves. This is well intentioned legislation that, with proper oversight, could offer benefit to veterans and their families in certain circumstances.

Veterans can suffer from some disabilities that greatly limit their ability to complete activities of daily living such as competency or ability to properly execute the necessary paperwork required in the filing of claims. There already exist provisions within VA law to provide for responsible parties to manage affairs for veterans when they are not capable of managing those affairs for themselves. Under the present system, appointed fiduciaries as well as designated powers of attorney are authorized to perform some actions on behalf of the veteran, almost always to their benefit.

It is important to recognize however, the necessity of proper oversight in situations such as this. Veterans in need of the provisions of this legislation are in many ways the most vulnerable of veterans. Dedicated oversight is necessary to ensure that the veterans affected, most of whom have little ability to protect themselves in such situations, are not subject to being taken advantage of by unscrupulous individuals or institutions. While some veterans do indeed require an advocate to act on their behalf to ensure they receive the benefits to which they are entitled, it is equally important to ensure that the rights of those veterans are not infringed upon.

As acting on behalf of the veteran is essentially similar to being a designated fiduciary on behalf of the veteran, it is important to point out some of the concerns about the existing fiduciary system. In previous testimony before the House Veterans' Affairs Subcommittee on Disability and Memorial Affairs, The American Legion noted that the Government Accountability Office (GAO) released a report in February 2010, "Improved Compliance and Policies Could Better Safeguard Veterans' Benefits". This report recommended VA "strengthen Fiduciary Program policies for monitoring fiduciaries, improve staff compliance with program policies, evaluate alternative approaches to meet electronic case management system needs and evaluate the effectiveness of consolidating 14 western Fiduciary Program units." In that testimony, The American Legion recommended authorizing personnel solely to administer the Fiduciary Program to ensure this program remains the priority and expertise of the personnel assigned to the Fiduciary Program. Similarly, specifically tasked personnel assigned to ensuring that those signatories acting on behalf of veterans deemed not capable of signing the proper paperwork by themselves

would seem important to protecting these veterans and ensuring that they are not taken advantage of.

Under conditions that ensure that the rights of the affected veterans are being protected, and with proper oversight, The American Legion supports this legislation.

S. 3348

This bill would provide for appeals misfiled to the Department of Veterans Affairs (VA) to be treated as a motion for reconsideration if the VA fails to forward the appeal properly to the Court of Appeals for Veterans Claims (CAVC) within the proper period of time. The veteran must have filed an appeal to the VA within the 120 days after the notification of a decision by the Board of Veterans Appeals (BVA) required to appeal a claim to the CAVC.

The bill is predicated on the fact that many veterans, unfamiliar with the structure of the veterans' claims benefits system, may mistakenly file an appeal to the VA, rather than the CAVC, after the claim has been finally adjudicated at the BVA. In proper legal procedure, a veteran disagreeing with a decision of the BVA has 120 days after receiving notification of that decision to appeal the claim to the Court. The veteran may also file for a motion for reconsideration within the VA.

Many veterans are unaware that the CAVC and VA are in fact separate entities. Therefore, veterans mistakenly file their intent to appeal to VA rather than the CAVC as would be the proper procedure. This legislation would offer protection to veterans who file in error in cases such as this.

In keeping with the spirit of the uniquely pro-claimant system of veterans' compensation benefits adjudication, this legislation can serve as a safety net for veterans already confused by a complex system such as the system for the adjudication of veterans benefits. The American Legion by resolution supports the extension of the 120 day period of eligibility to file an appeal to the CAVC to a period of one year. This position is predicated upon the need for a system that protects the rights of veterans who face challenges in the appeals system. The American Legion supports this legislation.

As always, The American Legion thanks this Committee for the opportunity to testify and represent the position of the over 2.5 million veteran members of this organization. We hope that we not only express what is in the best interests of our members, but also of the totality of veterans in this country. We stand ready to answer any questions or clarify any positions for this Committee, whether orally or in writing, and to address any future issues such as the Committee should require of us.

Chairman AKAKA. Thank you very much, Mr. de Planque.

[The prepared statement of Mr. Tarantino, Legislative Associate for Iraq and Afghanistan Veterans of America follows:]

PREPARED STATEMENT OF TOM TARANTINO, LEGISLATIVE ASSOCIATE, IRAQ AND AFGHANISTAN VETERANS OF AMERICA (IAVA)

Mr. Chairman, Ranking Member, and Members of the Committee, on behalf of Iraq and Afghanistan Veterans of America's one hundred and eighty thousand members and supporters, thank you for inviting me to testify at this hearing to share our members' views of on these important issues.

My name it Tom Tarantino and I am a Legislative Associate with IAVA. I proudly served 10 years in the Army beginning my career as an enlisted Reservist, and leaving service as an Active Duty Cavalry Officer. Throughout these ten years, my single most important duty was to take care of other soldiers. In the military they teach us to have each other's backs. And although my uniform is now a suit and tie, I am proud to work with this Congress to continue to have the backs of America's servicemembers and veterans.

| Bill # | Bill Name | Sponsor | Position |
|---|---|---|---|
| S. 1780 | Honor America's Guard-Reserve Retirees Act | Lincoln | Support |
| S. 1866 | Corey Shea Act | Kerry | Support |
| S. 1939 | Agent Orange Equity Act of 2009 | Gillibrand | Support |
| S. 1940 | Study herbicide exposure on children of Vietnam veterans | Gillibrand | Support |
| S. 2751 | Designate a TX VA Medical Center as George H. O'Brien, Jr., VAMC | Cornyn | No Position |
| S. 3035 | Veterans Traumatic Brain Injury Care Improvement Act of 2010 | Baucus | Support |
| S. 3107 | Veterans' Compensation Cost-of-Living Adjustment Act of 2010 | Akaka | Support* |
| S. 3192 | Fair Access to Veterans Benefits Act of 2010 | Specter | Support |
| S. 3234 | Veteran Employment Assistance Act of 2010 | Murray | Support* |
| S. 3348 | Allow reconsideration of misfiled BVA appeals | Akaka | Support |
| S. 3314 | Outreach to veterans who reside in Appalachia | Brown | Support |
| S. 3325 | Prohibit the collection of copayments for telehealth visits | Begich | Support |
| S. 3368 | Authorize certain individuals to sign VA claims on behalf of vets | Akaka | Support |
| S. 3352 | Veterans Pension Protection Act of 2010 (Tester) | Tester | Support |
| S. 3286 | Grants to agencies to assist with VA claims | Specter | No Position |
| S. 3330 | Veterans' Health and Radiation Safety Act of 2010 | Casey | Support |
| S. 3355 | Veterans One Source Act of 2010 | Klobuchar | Support |
| S. 3367 | Increased pension for married vets with aid and attendance | Akaka | Support |
| S. 3370 | Changes to joint DIC and Social Security application | Akaka | No Position |
| S. DRAFT | Expansion of VA multi-family transitional housing program | Burr | Support |

*IAVA has offered several technical recommendations for improving these bills.

S. 1780: HONOR AMERICA'S GUARD-RESERVE RETIREES ACT (LINCOLN)

IAVA supports S. 1780, which grants full veteran status to members of the reserve components who have 20 or more years of service and do not otherwise qualify under current laws. This legislation expands the definition of the word veteran to recognize servicemembers who served their country honorably for over two decades in the Guard and Reserve but were never called to active duty. We believe when someone takes the oath to defend this country, wears the uniform and serves that oath faithfully they have earned to be considered a full veteran and the benefits that go with it.

S. 1866: COREY SHEA ACT (KERRY)

IAVA supports S. 1866, the Corey Shea Act, which allows parents of fallen servicemembers to be buried in a national cemetery with their unmarried or childless sons and daughters. Many veterans of Iraq and Afghanistan are killed in their youth and never had the opportunity to start their own family. If the VA deems there is available space and the parent wants to be interred with their child should be allowed to do so in a national cemetery. As Denise Anderson, whose son Corey Shea was killed in Mosul in 2008, said in her testimony to House Veterans' Affairs Committee last year, "If you decide to pass this, it would give me some peace in my life to which I can pay more attention to my husband and daughter, who I feel I have been neglecting. I could finally be able to move forward in my life just knowing I could spend eternity with my son."

S. 1939: AGENT ORANGE EQUITY ACT OF 2009 (GILLIBRAND)

IAVA supports S. 1939, the Agent Orange Equity Act. This bill expands the number of Vietnam veterans who qualify for presumption of service connection for diseases associated with exposure to Agent Orange. We believe that all veterans exposed to the deadly herbicide should be granted these presumptions. Agent Orange didn't discriminate between Brown and Blue Water, neither should the VA.

Few if any of our members will be affected by S. 1939. However, exposure to toxic chemicals while serving in combat is a harsh reality for many Iraq and Afghanistan veterans. We are grateful that the VA just announced broad service connection presumptions for Iraq and Afghanistan veterans exposed to toxic burn pits and other hazardous chemicals. We believe that our brothers and sisters from the Vietnam War should have been extended the same treatment. It's long overdue that we afford them the benefits that they have earned.

On a technical note, since Vietnam Service Campaign Medals were not authorized for Vietnam until seven years after the war began, IAVA encourages the Committee to fully examine whether including Armed Forces Expeditionary Medals (Vietnam) along with Vietnam Medals are an appropriate criteria for eligibility for these presumptions. Furthermore, we would request that the Committee evaluate the potential affect of changing the current statutory language from "active service" to "served" and whether it would require re-litigation of claims.

S. 1940: STUDY ON THE EFFECTS OF EXPOSURE TO HERBICIDES ON CHILDREN OF VIETNAM VETERANS (GILLIBRAND)

IAVA strongly supports S. 1940, which requires the VA to complete a study of the effects of Agent Orange on the children of Vietnam veterans. The VA has already acknowledged that there is a link between some birth defects and exposure to Agent Orange, such as spina bifida. IAVA believes the VA must complete an exhaustive study to identify any additional diseases or conditions that the children of Vietnam veterans are suffering from due to their parent's service.

S. 2751: DESIGNATE A TEXAS VETERANS AFFAIRS MEDICAL CENTER AS GEORGE H. O'BRIEN, JR., VAMC (CORNYN)

IAVA has no position on S. 2751.

S. 3035: VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010 (BAUCUS)

IAVA supports S. 3035, which requires the VA to conduct a needs assessment on whether veterans living in the Northern Rockies or the Dakotas, suffering from Traumatic Brain Injuries, have access to quality VA health care.

S. 3107: VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2010 (AKAKA)

IAVA fully supports S. 3017, the Veterans' Compensation Cost-of-Living Adjustment Act, which ensures that critical veterans benefits are adjusted to keep up with inflation. However, we believe that these benefits should have an automatic annual COLA increase and should not be dependent on passage through Congress.

S. 3192: FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010 (SPECTER)

IAVA supports S. 3192, the Fair Access to Veterans Benefits Act, because it will accept late appeals from veterans who miss VA deadlines for good cause. Korean war veteran David Henderson was medically discharged for a service-connected injury after being diagnosed with paranoid schizophrenia. In 2002 he applied for an increase to his VA disability rating and the VA denied that request. During the 120-day appeal period Mr. Henderson was hospitalized due severe back pain and a psychotic break forcing him to file his appeal 15 days late.

Before Henderson's application for benefits, a doctor's note stating that he was medically incapable of turning the paperwork in on time would have been sufficient for the VA accept his appeal late. However, a recent Supreme Court case ruled that extending filing deadlines was unacceptable under current law. The Supreme Court decided that because the appeals deadline was set by Congress, and could not be extended, regardless of the circumstances.

IAVA believes that the deadline should have been extended for Mr. Henderson in his case. We also believe that veterans suffering from service-connected illnesses should be given the opportunity to extend VA deadlines if they prove that acute effects of their disability made them incapable of filling on time.

S. 3234: VETERAN EMPLOYMENT ASSISTANCE ACT OF 2010 (MURRAY)

IAVA fully supports S. 3234, the Veterans Employment Assistance Act of 2010, the first comprehensive veterans job bill since the new GI Bill. America's newest veterans face serious employment challenges. The process of returning to civilian life is complicated by the most severe economic recession in decades. Many Iraq and Afghanistan veterans, leaving the active-duty military, find civilian employers who do not understand the value of their skills and military experience. As a result, unemployment rates for Iraq and Afghanistan veterans are staggering.

S. 3234 will greatly aid unemployed veterans by:

- Expanding the new GI Bill to include training at vocational schools and the pursuit of apprenticeships and on-the-job training (OTJ);
- Providing a subsistence allowance for unemployed veterans enrolled in full-time employment and training programs;
- Assisting veteran owned small business owners with entrepreneurial training, Federal procurement assistance and greater outreach;
- Requiring public disclosure of the number of veterans hired by Federal contractors with contracts over $100,000 (VETS–100);
- Demanding more accountability from state employees who are assigned to assist unemployed veterans find jobs (DVOPs/LVERs);
- Creating a grant to encourage states to establish a veterans conservation corps;
- Establishing a college center of excellence to help veterans receive more academic credit for their military experience and training;
- Studying DOD Transition Assistance Programs (TAP); and
- Funding a number of pilot programs to help recently separated veterans use their military skills and training to find meaningful employment.

This is such an urgent bill for America's veterans that I will comment on each of its separate provisions.

VOCATIONAL TRAINING UNDER THE NEW GI BILL

*"After approximately 30 interviews and temporary positions I chose to attend school under the new GI Bill."—IAVA Vet*

The new GI Bill is the greatest investment in veterans and their families since World War II and it couldn't have come at a better time. Veterans, facing tough economic times and high unemployment rate, are flocking to universities across the Nation, making themselves more marketable in the job market. The Post-9/11 GI Bill has enabled over 250,000 students [1] to attend first-rate colleges and universities.

*"This was a huge disappointment to me when I found out my schooling was not covered under the new GI Bill. . . . I am a mechanic by vocation; there are no 4-year degree programs for people like me."—IAVA Vet*

Unfortunately, a significant number of veterans have been short-changed under the new GI Bill. Apprenticeships, on-the-job training and vocational programs are excluded from the new GI Bill. IAVA strongly supports the provision in S. 3234, which would include vocational training programs, apprenticeships and on-the-job training (OTJ) in the new GI Bill. Veterans pursuing vocational training should not be penalized for going to a strictly vocational school. The WWII GI Bill sent over 8 million veterans to school. More than half of those veterans were not seeking a college degree; they participated in some type of vocational training program. Unfortunately, nearly 16,000 modern veterans pursuing vocational training will not be able to access the new GI Bill.

On a technical note, IAVA recommends modifying section 7 of this bill to include a definition of an approved program of apprenticeship and not reference other programs. We believe this definition should mirror the Chapter 30 definition (38 U.S.C. 3002(3)(c)(i)). We also believe that the section allowing vocational programs under the new GI Bill should include approved programs under 38 U.S.C. 3452(f). This mirrors the current rules under the new GI Bill and 38 U.S.C. 3452(c) which is the definition of approved programs used by Chapter 30 of the Montgomery GI Bill.

Last, IAVA believes that including vocational programs in the new GI Bill is just one piece of a broader, more comprehensive effort to upgrade the new GI Bill. We look forward to working with the Chairman and Ranking Member as they develop their comprehensive new GI Bill upgrades legislation.

[1] Spring 2010 GI Bill Benefit Processing, http://gibill.va.gov/spring2010.htm.

EMPLOYMENT TRAINING ASSISTANCE

*"I have had to move my family 2–3 times in search for employment. . . . I have had LOTS of difficulty finding employment"—IAVA Vet*

We believe that the employment training assistance program will greatly help veterans struggling to find employment by offering GI Bill-like incentives to complete job-training programs. S. 3234 creates a monthly subsistence allowance for veterans enrolled full time in an approved employment training program. Veterans would receive a monthly subsistence allowance equal to the monthly living allowance provided under the new GI Bill. In order to be eligible a veteran would have to be unemployed for more than 4 consecutive months and no longer qualify for the GI Bill or vocational rehabilitation. Last, it would provide a veteran up to $5,000 in relocation expenses to participate in this program.

SMALL BUSINESS HELP

*"Navigating through the maze of red tape to A) start a business and B) get it registered as a Disabled Veteran-Owned Business. . . . A small business owner wears a lot of hats, and the soft skills acquired through military experience are not enough. I needed some real hands-on experience or time with a mentor to help create a successful enterprise."—IAVA Vet*

The Veterans Business Center (VBC) program proposed in S. 3234 will fund a number of grants to help small business owners grow and mature their businesses. The program will provide matching grants of $150,000 to approved groups who wish to become an official VBC. These VBCs will be responsible for providing direct education, counseling and development to veteran owned small businesses. The VBC program will also provide grants to help increase access to capital, assist in contract procurement and outreach to service-disabled veteran owned small businesses. Last, the VBC program will be responsible for hosting a biannual veterans' entrepreneurial development summit.

While we think the VBC program will be an incredibly helpful program to veteran-owned small businesses, we recommend a few minor modifications. First, we believe that the matching grant designed to help establish each VBC should be increased to $200,000. Second, the director of the VBC program should be given the flexibility to offer grants less than the full amount, in the event the organization requesting to become a VBC can't match the full amount. Last, we believe the VBC should include in their training programs how to "deployment-proof" a business for veteran owners who are still members of the National Guard or Reserves.

*"During my deployment I had to totally shut the doors on my construction business. It put my family in a very difficult position"—IAVA Vet*

TRANSITION ASSISTANCE PROGRAM (TAP) AND DISABLED TRANSITION ASSISTANCE PROGRAMS (DTAP)

*"Once I learned how to translate my skills into civilian-speak, I found I was in high demand and very competitive for several good positions."—IAVA vet*

Servicemembers approaching separation can take advantage of the Transition Assistance Program (TAP). The program provides employment and training information as well as a variety of counseling programs. The Departments of Defense, Veterans Affairs, Transportation, and Labor partner to conduct three-day workshops where servicemembers learn interview skills, tips for job searches and how to prepare civilian resumes and cover letters. The program has shown some effectiveness: according to the Department of Labor,[2] servicemembers who participate in TAP find their first post-military job three weeks faster. S. 3234 would require a complete study and recommendations to improve the TAP program.

Utilization of TAP is regrettably low. The Marine Corps is the only branch of service that requires its members to sign up for TAP briefings, but attendance is still not mandatory. The Department of Defense has established a goal of 85% participation across the services,[3] yet only 60–65% of all separating active-duty service-

[2] Gerry Gilmore, "Pentagon Improves Services for Transitioning Servicemembers, Families," American Forces Press Service, May 19, 2008: http://www.defenselink.mil/news/newsarticle.aspx?id=49927.

[3] Joseph C. Sharpe, Jr., Deputy Director of the American Legion National Economic Commission, Testimony before the U.S. House of Representatives Committee on Veterans' Affairs, "U.S. Department of Veterans Affairs/U.S. Department of Defense Cooperation in Reintegration of Na-

members attend the TAP employment seminars.[4] In the National Guard and Reserves, the usage rates are even lower: only 30 percent of all separating Reservists or National Guardsmen attend some portion of TAP.[5] In addition, all aspects of TAP are not always available and the time constraints of troops' demobilization process can make attending a TAP session difficult, if it is available at all.[6] To encourage greater participation, the Department of Defense launched TurboTap.org in 2007. This Web site allows active-duty and reserve servicemembers access transition resources on their own time, including information on military and VA benefits and employment assistance. There is still much to be done to achieve the 85% participation target.

FEDERAL CONTRACTING

*"I ended up getting a job with a company that is contracted out by the government and is unionized. So everyone is understandable and supports my actions with the military."—IAVA Vet*

The Federal Government is the world's largest buyer of goods and services, with purchases totaling over $425 billion each year.[7] With this level of spending the Federal Government can leverage its purchasing power to require potential contractors to increase veterans hiring. Current Federal law mandates Federal contracts over $100,000 "take affirmative action to employ" veterans.[8] These contractors are required to publish job openings with the state job banks and to annually report the number of veterans they have retained by submitting a VETS–100 form to the Department of Labor. These contractors are also prohibited from discriminating against veterans.

Unfortunately, the data collected from VETS–100 forms is aggregated and only partially published in the Department of Labor VETS annual report. IAVA is pleased to see that S. 3234 would require these forms to be publicly reported, allowing interested parties to review whether contractors are actually following through on these contracting requirements. The public disclosure of these forms should create healthy competition between contractors on which contractor hired more veterans. IAVA would love to see companies like Boeing and Lockheed Martin make these statistics part of their bids for the next big defense contract.

OTHER TECHNICAL NOTES

§ 9: Center of Excellence in Reforming Higher Education—In order to ensure this noble program is successful we recommend Including the Secretary of Education in the planning process along with the Secretary of Veterans Affairs and the Assistant Secretary of Labor for Veterans' Employment and Training.

S. 3348: ALLOW RECONSIDERATION OF MISFILED APPEALS (AKAKA)

IAVA supports this bill, which would streamline the process of appealing a disability claim and would not penalize veterans for misfiling a notice of appeal.

S. 3314: OUTREACH TO VETERANS WHO RESIDE IN APPALACHIA (BROWN)

IAVA supports this bill, which requires the VA to conduct outreach to veterans who reside in Appalachia. However, we feel that the VA must prioritize outreach nationally and we recommend that they include a distinct line item in their annual budget request specifically for outreach programs.

S. 3325: PROHIBIT THE COLLECTION OF COPAYMENTS FOR TELEHEALTH VISITS FOR VETERANS (BEGICH)

IAVA supports this bill, which would prohibit the VA from collecting copayments for telehealth and telemedicine visits. Since it is impossible for the VA to place brick and mortar buildings near every veteran in the United States, veterans who live in

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tional Guard and Reserve," June 24, 2008: http://veterans.house.gov/hearings/Testimony.aspx?TID=32446&Newsid=260&Name=%20Joseph%20C.%20Sharpe,%20Jr.

[4] Ibid.

[5] Women Veterans in Transition Pilot Research Study by Business and Professional Women's Foundation, "Building Strong Programs and Policies to Support Women Veterans," p. 2: http://www.bpwusa.org/i4a/pages/index.cfm?pageid=5383.

[6] Department of Labor, "Employment Situation of Veterans: 2007," April 10, 2008, p. 3: http://www.bls.gov/news.release/pdf/vet.pdf.

[7] http://www.sba.gov/contractingopportunities/index.html

[8] 38 U.S.C. 4212.

rural areas should not be charged if a medical professional could not see them in person.

S. 3368: TO AUTHORIZE CERTAIN INDIVIDUALS TO SIGN VA CLAIMS ON BEHALF OF CLAIMANTS (AKAKA)

IAVA strongly supports this common sense draft bill that will allow an authorized individual to sign on behalf of a veteran who is a minor, physically unable or declared mentally incompetent. Incapacitated veterans should not have to fight through bureaucratic red tape to get their paperwork moving.

S. 3352: VETERANS PENSION PROTECTION ACT OF 2010 (TESTER)

IAVA supports this bill, which would expand the amount of reimbursements that veterans and their dependents are forced to claim as income relating to eligibility for pension claims.

S. 3286: VA PILOT PROGRAM TO PROVIDE GRANTS TO STATE AND NON-PROFIT AGENCIES TO ASSIST CLAIMS DEVELOPMENT (SPECTER)

IAVA has no position

S. 3330: VETERANS' HEALTH AND RADIATION SAFETY ACT OF 2010 (CASEY)

IAVA supports this bill that aims to improve training for VA employees and contractors in the use of low-level radiation therapies.

S. 3355: VETERANS ONE SOURCE ACT OF 2010 (KLOBUCHAR)

IAVA supports this bill that intends to create an interactive one stop for veterans to learn about and access their benefits from the Department of Veterans Affairs.

S. 3367: INCREASE IN PENSION FOR MARRIED VETERANS WHO BOTH REQUIRE AID AND ATTENDANCE (AKAKA)

IAVA supports this bill, which would increase the rate of pension for a household with married disabled veterans requiring regular aid and attendance.

S 3370: CHANGES THE REQUIREMENTS FOR THE VA AND SOCIAL SECURITY TO PROVIDE A JOINT APPLICATION FOR DIC AND SOCIAL SECURITY BENEFITS (AKAKA)

IAVA has no position.

S. DRAFT: EXPANSION OF THE VA'S MULTI-FAMILY TRANSITIONAL HOUSING PROGRAM (BURR)

IAVA supports this bill, which would improve and expand on the VA's multi-family transitional housing program.

Chairman AKAKA. Mr. Hilleman.

## STATEMENT OF ERIC A. HILLEMAN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. HILLEMAN. Mr. Chairman, Ranking Member Burr, Senator Murray, thank you on behalf of the 2.1 million men and women of the Veterans of Foreign Wars and our Auxiliary for this opportunity to be represented here today. Given the large number of bills, I will limit my remarks to two or three issues the VFW would like to highlight for today's hearing.

The VFW believes one unemployed veteran is one too many. The number of unemployed veterans has skyrocketed to over a million. The remarkable young men and women who put their lives on the line for our Nation deserve much better. Congress needs to invest in the future of those who have invested in America by providing them with the training, skills, and opportunities for a chance at the American dream. We applaud Senator Murray for her legislation and for standing up and fighting to put America's veterans back to work.

The VFW enthusiastically supports S. 3234, Veteran Employment Assistance Act of 2010, which seeks to address the rampant unemployment among recently separated OIF and OEF veterans. It is a comprehensive approach to addressing veterans' unemployment. This bill invests in American small business, veterans' employment services, on-the-job training, and apprenticeship programs. Further, it capitalizes on existing military skills and develops programs that place veterans in comparable career tracks.

Through studies, this bill seeks to understand the barriers facing transitioning servicemembers while understanding the successes of Guard and Reserve units in re-employing their own members. The values of American veterans in our Nation's workforce cannot be understated.

Former servicemembers know how to work as a member of a team to creatively solve problems. They are trained to lead and know how to perform in unforgiving circumstances. They realize the repercussions of their conduct and understand the decisions they make have an impact on their organization. Veterans are punctual, professionally dressed at all times, lead healthy lifestyles, and are extremely trustworthy, motivated self-starters. Many veterans are technologically savvy and proficient with the use of computers. The battlefield of today requires a grunt to do much more than just point and shoot. They are civic-minded and willing to go the extra mile, and are committed, loyal employees. We ask Congress to help us market the inherent value of America's veterans.

Senator Akaka, your soon-to-be-released upgrades to the GI bill will also help put veterans back to work. With the advent of the Post-9/11 GI Bill, hundreds of thousands of veterans will and are improving their career trajectory through education. Their success is a direct result of this Committee's dedication and action to improving the lives of America's veterans.

The VFW believes a number of changes need to be made to the Post-9/11 GI Bill to address the needs of servicemembers and their families. The original bill provided training, apprenticeships, and vocational training for World War II veterans. The Post-9/11 GI Bill should also provide the same opportunity to seek careers in the skilled trades. The VFW supports standardization, simplification, and restructuring of all education programs with an eye toward equitable benefits for equitable service. The bill continues to serve as a strong tool in putting veterans back to work.

Further, we recognize that Congress alone cannot solve this epidemic of unemployment among our Nation's veterans. We urge Congress to encourage America to do her part for these veterans and help put them back to work. We need corporate America, union groups, Government agencies, law makers, and veterans groups to place America's veterans at the front of the employment line.

If I may, Mr. Chairman, the VFW would like to amend our written testimony to reflect for the record that S. 3368, a bill to amend Title 38 of the U.S. Code, to authorize certain individuals to sign claims filed with the Secretary of Veterans Affairs on behalf of claimants.

While these regulations in CFR 3.155 currently allow VA to accept the filing of an informal claim on behalf of a veteran by a

Member of Congress, a duly authorized representative or a "next friend," in practice VA has not recognized or treated a duly authorized representative's or a next friend's signature as evidence enough to initiate the claim. The VFW remains cautious that this authority be treated carefully to avoid fraud by an unscrupulous spouse, health care provider, or nursing home official.

This concludes my testimony. I would be happy to answer any of your questions, and thank you for this opportunity to testify.

[The prepared statement of Mr. Hilleman follows:]

PREPARED STATEMENT OF ERIC HILLEMAN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Chairman Akaka, Ranking Member Burr and Members of the Committee: Thank you for the opportunity to provide testimony on pending veterans' health and benefits legislation. The 2.1 million men and women of the Veterans of Foreign Wars of the U.S. and our Auxiliaries appreciate the voice you give them at this important hearing.

S. 1780, HONOR AMERICA'S GUARD-RESERVE RETIREES ACT

The Honor America's Guard-Reserve Retirees Act would recognize and authorize veteran-status to military retired members of the National Guard and Reserves who were never called to active duty but have served in other capacities for twenty or more years. The nation military cannot function without the Guard and Reserve. A large number of the Reserve Component members who have been called to serve in OEF/OIF qualify as veterans. However, some reservists' soul mission is to prepare other guard and reserve members for deployment, while never accruing qualifying active duty time to be classified as a veteran. For many servicemembers this is an issue of honor and pride in recognition of their service and sacrifice. VFW supports passage of this bill.

S. 1866, A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE ELIGIBILITY OF PARENTS OF CERTAIN DECEASED VETERANS FOR INTERMENT IN NATIONAL CEMETERIES.

VFW is happy to support legislation to allow parents of deceased veterans to be interred with their child in a national cemetery. The current conflicts find that many young men and women are often without a surviving spouse or child to share their final resting place. Allowing a parent to be buried with the veteran provides some comfort and closure fitting of this special bond. We understand that the bill gives the VA the authority to determine if there is space available at the gravesite of the veteran. We ask that carful discretion be used to make this determination, as many national cemeteries near capacity for burial needs of veterans. It is important to preserve the dignity of our national cemeteries.

S. 1939, AGENT ORANGE EQUITY ACT OF 2009

VFW strongly supports the Agent Orange Equity Act, which would expand presumptions related to exposures for veterans who served in the Republic of Vietnam and supporting missions. Current law requires Vietnam veterans to prove "boots on the ground' in order to qualify for presumptions of service-connection for herbicide-exposure related to illness. S. 1939 would expand the law so that Blue Water navy veterans and every other servicemembers awarded the Vietnam Service Medal who deployed to land, sea or air in the Republic of Vietnam are fully covered by the Agent Orange laws Congress passed in 1991.

This issue has been the subject of much litigation and wrangling of words and intent. It is our belief that Congress did not intend to exclude those veterans from compensation based on geographic lines. VA made this unilateral decision and has clearly chosen to ignore recommendations made by the Institutes of Medicine (IOM), the reviewing body that provides biannual reports linking scientific evidence with herbicide exposure. In fact, in 2009 IOM noted, "Given the available evidence, the Committee recommends that members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure." (http://books.nap.edu/openbook.php?record_id=12662&page=656)

The VFW believes it is time to amend the law and allow those veterans suffering from residual effects of Agent Orange to be compensated. This bill, when enacted will make it easier for VA to process claims of Vietnam veterans that suffer from

illness linked to toxic exposures that are already identified in the law. We urge Congress to pass this legislation quickly and compensate those veterans suffering as it is long overdue.

S. 1940, A BILL TO REQUIRE VA TO CARRY OUT A STUDY ON THE EFFECTS ON CHILDREN OF EXPOSURE OF THEIR PARENTS TO HERBICIDES USED IN SUPPORT OF THE UNITED STATES AND ALLIED MILITARY OPERATIONS IN THE REPUBLIC OF VIETNAM DURING THE VIETNAM ERA, AND FOR OTHER PURPOSES.

VFW supports the intent of this legislation. While we are not aware of any scientific evidence connecting Multiple Sclerosis (MS) and asthma in children to parental exposure to herbicides, we support any study that seeks to obtain available research and evidence of associations between diseases in children of Vietnam veterans. We believe that the public, exposed veterans, and VA all benefit by the knowledge obtained by such studies.

S. 2751, A BILL TO DESIGNATE THE DEPARTMENT OF VA MEDICAL CENTER IN BIG SPRINGS, TX, AS THE GEORGE H. O'BRIEN, JR., DEPARTMENT OF VA MEDICAL CENTER

VFW along with the Department of Texas VFW supports this legislation to honor George Herman O'Brien—a decorated veteran, Medal of Honor recipient, and a longtime member of the Big Springs, Texas, and community. Major O'Brien began his career of service in the Merchant Marines in 1946, then joined the U.S. Marine Corps in 1950, and his ladder years volunteering among his fellow veterans at the Big Springs VA Medical Center. He died in March 2005; in November 2008, a statue of his likeness was unveiled at the medical center in his honor. It is only fitting that his final tribute be renaming the VA Medical Center in Big Springs as the George H. O'Brien, Jr. Medical Center.

S. 3035, VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010

VFW supports Senator Baucus' bill that would require a report on establishing a Polytrauma Rehabilitation Center or Network site in the northern Rockies or Dakotas. Polytrauma care is provided to veterans and returning servicemembers with injuries to more than one physical region or organ system. One of which may be life threatening and/or results in physical, cognitive, psychological, or psychosocial impairments and functional disability.

As of April 2007, VA has treated over 350 OEF/OIF servicemembers in their inpatient units. The vast majority of these patients have been on active duty at the time of admission to a center and sustained a trauma injury while in combat. Most of these patients are then discharged and receive very specialized follow-up care at a Polytrauma Network Site, or other VA facility in the Polytrauma System of Care.

VA's Polytrauma System of Care includes four Polytrauma Rehabilitation Centers and 21 Polytrauma Network Sites. None of which are located in North Dakota, South Dakota, Idaho, Montana, eastern Washington or Wyoming. These States have among the highest per capita rates of veterans with injuries from military service in Iraq and Afghanistan. VFW believes that the number of discharged servicemembers living in the area warrants a report for capacity of care, but insists that it go hand in hand with VA's ability to support the center with a full staff and retention of professional consultants and specialties related to polytrauma.

S. 3107, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2010

VFW is pleased to support the annual cost-of-living adjustment to the rates of disability compensation, clothing allowance, and DIC. As in the past, the adjustment is linked to the rate of increase of the Consumer Price Index (CPI) and Social Security benefit. Last's year COLA bill passed into law, but no increase was given due a struggling economy and the decline in the CPI.

We urge Congress to approve a COLA for 2011, as the benefit provides for the daily needs of over 3.5 million veterans and their dependents living on fixed incomes. VFW believes that COLA and all benefits earned by our heroes are an ongoing cost of war. The payment of disability compensation is a central mission of VA, and should remain available and not be diminished by inflation. Even a small increase makes a positive impact in the lives of veterans and their dependents.

S. 3192, FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010

VFW supports this bill, which would provide some flexibility in the equitable tolling of timelines for the Board of Veterans' Appeals, and for other purposes. We believe that this bill creates flexibility in favor of veterans within the claims appeal

process. The current 120-day deadline to file an appeal to the US Court of Appeals for Veterans Claims (CAVC) does not leave room for veterans that may have unique circumstances due to medical or mental health problems. An example of this is the David Henderson case. Because he suffers from paranoid schizophrenia, he was unable to meet the 120-day deadline and was denied the right to appeal to the CAVC.

This is but one of many instances where a veteran was unable to file a timely appeal due to reasons of a mental condition. Subsequently, he was denied the ability to have his appeal heard by the appropriate appellate body. We applaud the change that this legislation makes in granting veterans, of past and present leeway in the appeals process. It provides a just and equitable system for those who have suffered due to circumstances beyond of their control and ensures they have their day in court.

S. 3234, VETERANS EMPLOYMENT ASSISTANCE ACT OF 2010

The VFW enthusiastically supports this legislation, which seeks to address the rampant unemployment among recently separated OIF/OEF veterans. It addresses multiple sectors that impact veterans' employment. The following is a section by section break out of the provisions of the bill.

Section 3, establishes a Veterans Business Center (VBC) Program under the authority of Small Business Administration (SBA) in consultation with the Secretary of Labor. This program expands the grants and funding available to the growing number of centers and universities that provide entrepreneurial development, counseling, education, and mentoring to veteran entrepreneurs. This provision would authorize $10 million in fiscal year (FY) 2010 and $12 million in FY 2011 for these veteran business centers. The VBC Director, established under this program, will allocate grants to centers meeting the established performance benchmarks while matching grant dollars received. Grants will be broken into two categories, "initial grants" and "growth funding grants." Business centers in areas where the population of veterans exceeds the national median or the population of OIF/OEF veterans exceeds the national median will be given priority for grants.

This section also provides business centers a total of $4.5 million for FY 2011 and FY 2012 for three specific grant types to the tune of $1.5 million each. The VBC Director would be charged with issuing individual grants up to $75,000 annually to develop programs locating capital—increasing funding for local veterans owned businesses, providing procurement assistance for Federal contracting, and offering service-disabled veterans-owned business development programs specific to the injured veterans.

Finally, section 3 commissions a joint report, between SVA and VA, regarding the Direct Loan program. This report would focus on the feasibility of establishing a direct loan program for veteran-owned small businesses.

The VFW continues to support additional financial tools, education, training and assistance for veteran entrepreneurs. Small businesses remain the engine of our economy, while veteran entrepreneurs are a unique subset of that engine. The same drive, tenacity, and dedication that make our Nation's servicemembers and our military successful are the same intangibles that propel them in the private sector.

VFW believes that many veteran entrepreneurs would benefit greatly from the training, networking, and assistance in navigating the provisions this bill promotes. Despite an uncertain economic climate, the number of veterans starting business and growing businesses is likely to increase. This legislation will help to ensure those veterans and disabled veterans have access to essential services to growing a successful business. Further, Veterans Small Business development is essential to combating unemployment among veterans. Veteran entrepreneurs are more likely to hire other veterans, knowing the value of military service.

Section 4, requires biannual reporting to Congress by the Administrator of the Interagency Task Force for Veterans and Service Disabled Veterans Owned Small Business. The VFW supports the formation and reporting of the Interagency Task Force.

Section 5, shortens the deadline from three years to one year, for Disabled Veterans Outreach Program Specialist (DVOPS) and Local Veterans' Employment Representatives (LVER), to meet the prerequisite training requirements. This legislation requires DVOPs and LVERs to educate other one-stop center staff about the nature of their work, while requiring them to learn about the other programs available through the one-stop delivery system. Failure to comply with the required training deadline would result in forgoing a percentage of the Federal grants that fund the state DVOP and LVER programs.

The DVOPs and LVERs are often the first and only contact a veteran may have with a representative assisting them with veteran specific employment services. The

VFW believes that this contact must be as personalized and helpful to the veterans as possible. This legislation encourages higher levels of competency among DVOPs and LVERs earlier in their careers. By shortening the deadline from three years to one year to complete training, this increases the likelihood that a veteran will be meeting with a knowledgeable representative. Further, the DVOP and LVER positions have historically suffered from high turnover among staff. This high turnover reinforces the need for constant and continual training. The one-year deadline seeks to meet this need.

Section 6, would create a new program under Chapter 42 of Title 38, providing assistance to unemployed veterans seeking training or financial relocation assistance to pursue employment. This legislation authorizes $100 million annually to pay veterans a monthly living stipend at the rate of E–5 with dependents, Basic Housing Allowance (BHA). A veteran unemployed at four months or more, who was not in receipt of other VA education/training assistance, would qualify for six months of BHA to pursue a qualified education, training, or apprenticeship program. Additionally, a veteran could access a onetime grant of up to $5000 toward moving expenses for a DOL recognized training program or position within the training program. Finally, DOL will be required to submit an annual report outlining the usage and demographics of this program.

This legislation will provide numerous veterans with the financial support to seek training and assist them with relocation expenses. Veterans at any point in their careers would be encouraged to retool and retrain to support their families, while also meeting the needs of a dynamic labor market. All too often guard and reserve members return home from military service only to find viable hometown industries and previous employers have closed or moved on. Often veterans experience a mid-career break in employment and need further education or training to reenter the work force-this bill guarantees an investment in our veterans' competitive American industries.

Section 7, accomplishes the VFW's goal of equitably realigning Chapter 30, Montgomery GI Bill (MGIB) programs into Chapter 33, the Post-9/11 GI Bill. This legislation would provide a mechanism to authorize and assist veterans in pursuing approved apprenticeship or on-the-job-training programs. It would provide a monthly benefit to veterans in addition to a housing allowance equal to the BHA rate of an E–5 with dependents while an enrolled veteran. The monthly compensation and charge to entitlement would be used at the rate of 75 percent for the first six months, 55 percent for the second six months, and 35 percent for any remaining months of training.

The VFW believes a number of changes need to be made to the Post-9/11 G.I. Bill to address the needs of today's servicemembers and their families. The original G.I. Bill provided training apprenticeships and vocational training for World War II veterans. The Post-9/11 G.I. Bill should also provide veterans the same opportunity to seek careers in skilled trades. The VFW supports the standardization, simplification and restructuring of all education programs, with an eye toward equitable benefits for equitable service, to include:

- Remaining Chapter 30 programs (lump sum payments, vocational training, distance learning) should be moved into Chapter 33.
- Title 10, Section 1606, the Guard and Reserve Select Reserve GI Bill, needs to reflect the Chapter 33 scale.
- Chapter 35 survivors and dependent educational benefits should also be comparable to Chapter 33.
- Ultimately, phaseout Chapter 30 and Chapter 34; simplifying benefits based on Chapter 33.

Furthermore, the VFW believes that members of the National Guard and Reserve who serve under Title 32 U.S.C., Active Guard Reserve program, should have their service recognized under Chapter 33. By virtue of their status, approximately 45,000 veterans who serve our country under Title 32 do not receive credit toward accruing benefits under the Post-9/11 GI Bill, even though their service was often in support of Federal initiatives. All military men and women should be rewarded equally.

The VFW also supports allowing veterans who attend on-line universities to be eligible for the Post-9/11 GI Bill, and therefore, draw an equitable living stipend. Veterans often decide to attend online universities through necessity—family and work obligations, service-connected disability limitations, as well as financial restrictions that prevent them from becoming traditional, on-campus students. Veterans enrolled in online universities today receive no cost of living stipend. The VFW wants to see this inequity fixed.

Section 8, would establish a "veterans conservation corps" grant program. Grants, up to $250,000, would be awarded to States for the purpose of maintaining local

parks, lands, reserves, and other outdoor spaces. States would be required to establish partnerships with one-stop centers, universities, labor organizations, and veterans' service organizations to promote veterans in employment and volunteer opportunities in their communities.

The VFW continues to support collaborative and innovative programs to invest in communities and put veterans to work. This program has the potential to put veterans to work and give them practical experience organizing communities to care for the environment while developing and marketing 'green' industries in a given area.

Section 9, would establish grants for research, development, planning, implementation, and evaluation of military credit to count toward higher education. This section directs the VA and DOL to collaborate and establish grants, ranging from $2 million to $5 million. Eligible institutions, such as colleges, military facilities, medical centers, and other programs would bridge the gap between military service and careers.

We are extremely supportive of translating transferable military skill into college credit or careers. This grant program has the potential to target specific military occupational specializations (MOS) and place those individuals on the fast track toward certifications and degrees in current or closely related fields. We have long maintained, if you can drive a truck through the toughest spots in Iraq and Afghanistan, you should be able to drive a truck in the U.S. The same holds true for many electronics, mechanical, and technical fields.

Section 10, would require the Secretary of Labor to publicize on the internet information reported by contractors to be in compliance with veterans employment requirements. We support the continued oversight and transparency that Congress and the Administration has sought to establish in government.

Section 11, would establish a grant program, entitled "Military Pathways Demonstration Program," focused specifically on putting military medical personnel and information technology (IT) personnel directly into the work force and education programs of their respective skill areas. The annual authorization of $10 million would direct DOL and VA to develop a competitive grant program to test servicemembers' transition into MOS related fields in the health care and IT sectors.

The VFW strongly supports strengthening the gaps that exist between military specialization and the civilian counterpart industries. This grant program would make targeted links into corporate America in IT and the health care industries. It would seek to connect companies, organizations, and institutions of learning for the betterment of servicemembers. Once paths and bridges are successfully built into training and employing veterans in specific fields, this program can be broadened to other skill sets and industries. The cutting edge of both the IT and medical fields are in the hands of servicemembers in Iraq and Afghanistan. Allowing them to translate this skill and real world application into the private sector benefits the individual veteran and America's industries.

Section 12, establishes a grant program for energy-related industry, much like that of Section 11 of this bill. The annual authorization of $10 million would develop a competitive grant program for states to collaborate with labor organizations and the energy industry to develop training and apprenticeship programs. The VFW strongly supports developing public-private partnerships to place America's veterans onto viable career trajectories.

Section 13, would authorize the Secretary of Health and Human Services (HHS) to establish a grant program to transform military medics into community emergency medical service personnel under the existing "Rural emergency medical service training and equipment assistance program." Rural employment is one of the areas hardest hit by the economic downturn. Further, guard and reserve members often reside in these areas and due to frequent deployment have had difficulty reconnecting with employment upon their return. This legislation allows many veterans to seek training and employment in their respective community. The VFW supports this grant expansion under HHS.

Section 14, directs the Secretary of the Department of Defense to designate military housing construction projects for a pilot program to utilize approved veterans apprenticeship programs. This pilot would span FY 2011 to 2015, requiring DOD to utilize veterans enrolled in DOL qualified apprenticeship programs.

The VFW applauds the effort to promote Federal contracting and utilization of veterans' contractors in Federal procurement. This pilot has the potential to improve the DOD's adherence to the 3 percent contracting goal, while developing veterans' apprenticeship in the construction trades. This bill seeks to establish a geographic dispersion of this pilot catalyzing veterans' employment in the construction trades nationwide.

Section 15, directs DOL and DOD to study and report to Congress on the Transition Assistance Program (TAP) with an eye toward improving services to veterans. The study would take into account the needs of veterans and the Armed Forces, assess current costs and programs, and recommend programming and activities to improve TAP as well as serving local veterans residing near military installations.

TAP has long served as the sole means of providing a springboard for separating servicemembers. While TAP has been successful at providing a wealth of information in a short timeframe to separating servicemembers, it is often seen as more of a 'checked-box' for separating troops. The VFW supports improving these programs to better inform and prepare servicemembers reentering civilian life.

Section 16, directs the Secretary of Defense to study the National Guard Employment Enhancement Program of the Washington State National Guard. This study would examine this program and make recommendations to expand or authorize similar programs throughout the country.

We support the study of employment programs among guard units. Many of the local best practices can be shared and translate nationally to help ease the reintegration of Guard and Reserve members. Nearly 40 percent of the troops deployed in support of OIF/OEF are Guard and Reserve units from across the Nation, many of whom are frequently seeking new employment and reemployment. The successes of employing these veterans translates into much more than just jobs, it improves the quality of life of many military families as well as the American economy.

VFW thanks Senator Murray for introducing this comprehensive employment bill and urges Congress to move quickly on this legislation to put American heroes back to work.

S. 3286, TO REQUIRE VA TO CARRY OUT A PILOT PROGRAM ON THE AWARD OF GRANTS TO STATE AND LOCAL GOVERNMENT AGENCIES AND NONPROFIT ORGANIZATIONS TO PROVIDE ASSISTANCE TO VETERANS WITH THEIR SUBMITTAL OF CLAIMS TO THE VETERANS BENEFITS ADMINISTRATION (VBA)

This bill is designed to increase effectiveness of outreach to veterans as it directs the Secretary to carry out a pilot program on the awarding of grants to State and local government agencies and non-profit organizations that assist veterans with their claims.

The VFW has always encouraged and supported increased awareness of benefits and services provided by VA to veterans. We believe that all veterans and their survivors should have access to up-to-date information about services and benefits for which they may be eligible. However, since the success of this initiative will result in increased claims submissions to VA, we urge that funding for VBA adjudication keep pace with increases in the number of claims filed as a result of greater outreach at the local level.

We also encourage substantial outreach efforts at the local and state level be made on behalf of National Guard and Reserve members and would like to see additional language which specifies oversight by Congress regarding use of funds granted to state and local governments who perform outreach services. VFW also encourages effective training of those reaching out to veterans' to ensure that funds are being spent properly and services explained properly.

S. 3314, TO REQUIRE VA AND THE APPALACHIAN REGIONAL COMMISSION TO CARRY OUT A PROGRAM OF OUTREACH TO VETERANS WHO RESIDE IN APPALACHIA, AND FOR OTHER PURPOSES

The VFW supports legislation that would require VA and the Appalachian Regional Commission to carry out a program of outreach for veterans who reside in Appalachia. The Appalachian Regional Commission is the region extending from Mississippi to New York, through 13 states, 420 counties, and 205,000 square miles and encompassing 24.8 million people. Historically, Appalachia has faced chronically high rates of poverty, unemployment, substandard housing, low educational levels and poor health care. The military/veteran population residing in the area is often unaware of the benefits provided by VA or other local, county, and state veterans' services. Combine that with scant access to care, varying support services, and problems finding transportation to VA appointments over long distances further isolates this population of veterans. We can all agree continued outreach is needed, but more importantly follow-up care and essential services is central to improving the quality of life for these veterans.

VFW applauds section 1 (c) (Projects) which requires VA and the Appalachian Regional Commission to enter into agreements, provide technical assistance, award grants or contracts to state and local governments, veterans service organizations

and businesses to increase the number of individuals providing services to veterans and their families. We look forward to working with the communities of Appalachia and encourage Congress to appropriate proper funding to continue offering comprehensive education and outreach to Appalachian veterans.

S. 3325, TO AMEND TILE 38, UNITED STATES CODE, TO AUTHORIZE THE WAIVER OF THE COLLECTION OF COPAYMENTS FOR TELEHEALTH AND TELEMEDICINE VISIT OF VETERANS, AND FOR OTHER PURPOSES

The VFW strongly supports this legislation, which would exempt disabled veterans from paying copayments for telehealth and telemedicine visits. By waving copayments we encourage the use of this cost effective service, which connects the specialist via telecommunications to the veteran.

The VFW applauds VA as being a leader in this new area of health care. Care Coordination General Telehealth (CCGT) uses telehealth technologies to make diagnoses, manage care, perform check-ups, and actually provide care to veterans. The use of video technologies makes it possible for veterans, many of whom live in rural or remote areas, to come to VA's community-based outpatient clinics and connect to a specialist or other practitioner who may be in a hospital hundreds or even thousands of miles away. Offering this special service is a wonderful use of technology and resources. Therefore, we are happy to offer our support for this enhanced health care service with the exclusion copayments by our veterans.

S. 3348, TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE TREATMENT AS A MOTION OF RECONSIDERATION OF A DECISION OF THE BOARD OF VETERANS' APPEALS OF A NOTICE OF APPEAL OF SUCH DECISION MISFILED WITH VA

The VFW supports this legislation as it addresses the ambiguity involved with informal notices of disagreement or motions to reconsider an appeal. Currently, if a veteran formally communicates with the VA regarding their dissatisfaction with their case or the decision rendered, the VA must make a choice. This bill allows any written expression of disagreement, by the veteran, with a Board of Veterans Appeals BVA decision to be treated as a motion received by the BVA within the 120 appeal period—as a formal motion to reconsider.

S. 3352, VETERANS PENSIONS PROTECTION ACT OF 2010

This legislation would protect pension payments from including insurance settlements of any kind from the calculation amount in determining pension. Further, this bill would require VA to make determinations on the fare market value and replacement value of any assets claimed for exclusion under the insurance settlement.

The VFW supports the intent of this legislation, but cannot support this language. We believe that this bill would require VA to make further determinations regarding replacement value in the cases of insurance settlements. The current pension threshold for a veteran without dependents is $11,830 annually. In order to exclude any income resulting from an insurance settlement from factoring against the $11,830, VA would need to further examine the values associated with the insurance settlement. These additional decisions will further delay and complicate a relatively simple benefit.

We would suggest, this legislation be rewritten to accept any insurance settlement as excluded from the calculation of pension. It is likely this will achieve the noble goal of aiding a veteran in serious financial distress, while allowing them to replace the loss or damaged property. This also prevents VA from expending more resources to develop other pension claims.

S. 3355, VETERANS ONE SOURCE ACT OF 2010

The VFW currently has no formal position on this legislation.

S. 3367, TO AMEND TITLE 38, UNITED STATES CODE, TO INCREASE THE RATE OF PENSION FOR DISABLED VETERANS WHO ARE MARRIED TO ONE ANOTHER AND BOTH OF WHOM REQUIRE AID AND ATTENDANCE, AND FOR OTHER PURPOSES

VFW supports the increase in aid and attendance rates for married couples. This bill corrects a drafting mistake in Public Law 105–178, Section 8206, which increased the aid and attendance rates for veterans receiving VA pension who were in need of aid and attendance; but failed to provide the same increase to married couples in receipt of the same benefits. The change will provide an additional $825 dollars, bringing the amount of pension of a wartime veteran couple in line with

what their peers receive. VFW believes that this change is long overdue and asks Congress to enact this bill quickly.

S. 3368, TO AMEND TITLE 38, UNITED STATES CODE, TO AUTHORIZE CERTAIN INDIVIDUALS TO SIGN CLAIMS FILED WITH THE SECRETARY OF VETERANS AFFAIRS ON BEHALF OF CLAIMANTS, AND FOR OTHER PURPOSES

The VFW cannot support this bill, as we believe it to be duplicative of VA's regulations, CFR 3.155. Current VA regulations allow for the filing of an informal claim on behalf of a veteran by a Member of Congress, a duly authorized representative or a 'next friend.' Further, we believe that this bill may increase the opportunity for fraud by an unscrupulous spouse, health care provider, or nursing home official to initiate a claim without the knowledge or consent of the otherwise competent veteran. We also have concerns that the bill does not specify the level of proof a family member must provide to VA to establish that the claimant is mentally incompetent or physically unable to sign a form. We believe that this will impose another burden on VA as well as create an opportunity for fraud.

S. 3370, TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE PROCESS BY WHICH AN INDIVIDUAL FILES JOINTLY FOR SOCIAL SECURITY AND DEPENDENCY AND INDEMNITY COMPENSATION, AND FOR OTHER PURPOSES

VFW supports this legislation, which adds clarity to VA's interpretation of law regarding the award of Social Security and DIC. Currently, Social Security has the ability to provide electronic notifications to VA in the event of a survivors spouse seeking survivors' benefits. This bill would give VA the authority to accept any documentation or electronic transmission as proof of eligibility in the death of a veteran.

DRAFT BILL, TO AMEND TITLE 38, U.S.C., TO IMPROVE THE MULTIFAMILY TRANSITIONAL HOUSING LOAN PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS BY REQUIRING THE SECRETARY OF VETERAN AFFAIRS TO ISSUE LOANS FOR THE CONSTRUCTION OF, REHABILITATION OF, OR ACQUISITION OF LAND FOR MULTIFAMILY TRANSITIONAL HOUSING PROJECTS INSTEAD OF GUARANTEEING LOANS FOR SUCH PURPOSES, AND FOR OTHER PURPOSES

The VFW supports this legislation, which would transform the VA's multifamily transitional housing loan grant program into a direct lending program for the same purpose. This program has been underutilized since its inception in 1999, yielding only one guarantee loan. The emphasis President Obama and Secretary Shinseki have placed on combating veterans' homelessness requires every available tool. This program could have a real impact in ending homelessness among veterans.

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RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO ERIC HILLEMAN, NATIONAL LEGISLATIVE DIRECTOR, VETERANS OF FOREIGN WARS

*Question.* Do you think it would be best to try and centralize all GI Bill Benefit programs under one umbrella and how would you envision that taking place?

Response. Yes, the VFW believes a number of changes need to be made to the Post-9/11 G.I. Bill to address the needs of today's servicemembers and their families. The original G.I. Bill provided training apprenticeships and vocational training for World War II veterans. The Post-9/11 G.I. Bill should also provide veterans the same opportunity to seek careers in skilled trades. The VFW supports the standardization, simplification and restructuring of all education programs, with an eye toward equitable benefits for equitable service, to include:

> Remaining Chapter 30 programs (lump sum payments, vocational training, distance learning) should be moved into Chapter 33.

> Title 10, Section 1606, the Guard and Reserve Select Reserve GI Bill, needs to reflect the Chapter 33 scale.

> Chapter 35 survivors and dependent educational benefits should also be comparable to Chapter 33.

> Chapter 34, VR&E programs need to be updated and in parity with Chapter 33.

> Ultimately, phaseout Chapter 30 and Chapter 34; simplifying benefits based on Chapter 33.

Remaining Chapter 30 programs (lump sum payments, vocational training, distance learning) should be moved into Chapter 33:

- Include Title 32 AGR eligibility as qualifying active duty time for the Chapter 33.
- Allow citified Vocational Programs (non-degree granting institutions) to qualify for "approved programs."

– Living allowance, tuition, and the books stipend should be available for these programs.

– Students attending public vocational programs should not have to pay out of pocket and private vocational schools should get the same benefits as private colleges.

• Allow OJT/Apprenticeship programs to qualify for Chapter 33.

– Living allowance rates should be based on the zip code of the program.

– The living allowance should be tiered like the MG*IB* (first six months at 75%, second six 55%, and 35% for the remainder of the program). The rate should be based on BAH, with eligibility charged at the percentage received.

– The book stipend should be available the first year paid in six month increments to cover tools, dues, and programs supplies.

• Allow a veteran to take multiple test/certifications under the $2000 testing cap of Chapter 33.

– If the veteran exceeds the $2,000 cap then s/he should be charged a percentage of monthly eligibility based on the national average BAH.

– Students should receive up to $2,000 worth of reimbursement for multiple test/certifications without a charge to entitlement.

• Distance learners need living allowance based on their residency at a percentage of BAH.

– Fix living allowance of Chapter 33 to reflect the percentage break down like that of MGIB.

• Pay a living allowances based on Full time, 75% time or 50% time tiers to make rates simpler to understand and greatly reduced the number of over and underpayments and charge eligibility accordingly.

Title 10, Section 1606, the Guard and Reserve Select Reserve GI Bill, needs to reflect the Chapter 33 scale.

• Move this program out of Title 10, create a Guard/Reserve benefit at the rate of 30 percent, reflecting the existing sliding scale currently used for accrued benefits under Chapter 33.

Chapter 35 survivors and dependent educational benefits should also be comparable to Chapter 33.

• All Chapter 35 programs should reflect the mechanisms of payment under Chapter 33.

– Tuition, fees, and books should be compensated at the same rate.

– Eligibility and authorized programs should be identical to Chapter 33.

Chapter 34, VR&E programs need to be updated and in parity with Chapter 33.

• Remove the Delimiting Date for VR&E.

• Increase VR&E's Educational Stipend to Reflect Chapter 33.

• Additional Assistance for Veterans with Dependents under VR&E.

• Jump Start VR&E Enrollment. Eliminate the second determination, accept and support all eligible veterans who make the initial qualification for the program.

• Measure Veterans Long-Term Employment under VR&E.

– Currently, the measure of success is the number of veterans gainfully employed for a period of 60 days after completing a VR&E program. Such a short-term measurement limits the VR&E program to short-term goals instead of properly helping disabled veterans succeed for life.

Ultimately, phaseout Chapter 30, Chapter 32, and Chapter 34; simplifying benefits based on Chapter 33.

• All VA education programs should be unified and reflect equitable benefits for qualified recipients.

• With the more generous benefit of Chapter 33, and the fast approaching date of veterans only eligible for Chapter 30, Chapter 30 should be eliminated.

– The same holds true for Chapter 32 (VEAP). Vietnam era veterans who are still eligible for Chapter 32 are also most likely eligible for Chapter 33 and more likely to utilize the new GI Bill.

• Chapter 34 each survivor should be compensated at the same rate available under Chapter 33. Thus, making Chapter 34 no more than a description of eligibility for Chapter 33 as a survivor.

Chairman AKAKA. Thank you very much, Mr. Hilleman.

And now we will receive the testimony of Mr. Weidman.

**STATEMENT OF RICHARD WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; ACCOMPANIED BY ALAN OATES, CHAIRMAN, AGENT ORANGE/DIOXIN AND OTHER TOXIC EXPOSURES COMMITTEE**

Mr. WEIDMAN. Thank you very much, Mr. Chairman, for the opportunity for us to present our views here today, and I, too, will limit oral remarks to just a couple of bills.

The first is S. 1780. Perhaps Colonel Bob Norton from MOAA said it best when he said, "Same hostile fire, same benefits." That precept applies to this bill. There are many other elements of services and benefits that are available to veterans that we need modification in the Guard and Reserve legislation to make sure that that precept is honored, "Same hostile fire, same benefits."

S. 1939, the Agent Orange Equity Act, is something that is long overdue. We are in the 35th year since the formal end of the war, and we still are not yet in the final stretch in terms of delivering justice to those men and their families who were harmed by virtue of military service by exposure to Agent Orange and other toxins in Vietnam or elsewhere in the world. The Agent Orange Equity Act would extend the presumption that was wrongfully denied by the VA more than 10 years ago.

The Institute of Medicine, in its most recent study in the strongest language possible, in their biennial review said that there was no valid scientific reason for excluding the Blue Water Navy people. I want to repeat that: there was no valid scientific reason for excluding the Navy people.

The Secretary heard that and empanelled a special—contracted with the IOM to empanel a special group of scientists that began work at the beginning of this month; and on May 3, VVA, both Mr. Oates and I, testified and met with that panel as they were considering that.

One of the key things is that the Australians have completed three complete epidemiological studies of their veterans of everybody who served in their Armed Forces during the Vietnam War, and they are working on a fourth. In the third completed study, they discovered that Navy vets had higher cancer rates of all sorts, particularly those conditions that would emanate from exposure to Agent Orange, than the Army folks, and they could not figure it out. They then contracted with the University of Queensland, a worldwide respected institution, to look at this issue, and they zeroed in on desalinization and discovered that the desalinization actually had the perverse effect of concentrating the dioxin. Agent Orange is not water soluble. It is water-suspensible, and people came out into the gulf, close in to shore, much closer than VA would have you believe.

Yankee Station was a particular point off the coast of Vietnam. What most of those who were supporting the effort in Vietnam, particularly supporting the carriers, would try to keep more or less on that point and head in toward shore; and when they got in too close, they turned around and came back in order to launch and receive aircraft. As a result and because the South China Sea is very shallow, a lot of this reached the ships with desalinization.

VA claimed that this was a poor study, that it was poor science. They never have said why. And it is, in fact, a peer-reviewed study. It has been peer-reviewed and written about in numerous scientific journals. It conforms to World Health Organization standards. Not only that, VA has not done—they have had 35 years to do an epidemiological study of those of us who served in Southeast Asia and they still have not even had something on the drawing boards, one.

Two, they have had the opportunity now for 7 years to replicate the University of Queensland study and see whether it would be validated or not validated. That is what science is all about, and VA has not done that.

In addition to that, VA currently is not funding a single scientific effort out of the Office of Research and Development that deals with the long-term adverse health impact of exposure to Agent Orange and other toxins in Vietnam. As a result of that, there is not any science to review.

What the Institute of Medicine process does under the law that this Committee took the lead on getting passed through Congress, the Agent Orange Act of 1991, the Institute of Medicine can only review the science that is done by others. But the Federal Government is not funding any science to look at either Vietnam veterans, those who served in the Southeast Asia theater of operations, or our progeny. So, we also strongly favor S. 1940 because it starts the ball rolling in that direction of forcing VA to look at this whole question of progeny—not just children but also grandchildren.

There are a number of other very positive bills, and I hope we get some questions about Senator Murray's act. Senator Murray, I thank you for your leadership in introducing this comprehensive bill. We have some specific comments as to how it may possibly be improved.

I thank the Chair for our opportunities. Mr. Oates and I would be glad to answer any questions. Thank you, sir.

[The prepared statement of Mr. Weidman follows:]

PREPARED STATEMENT OF RICHARD WEIDMAN, EXECUTIVE DIRECTOR, POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA AND ALAN OATES, CHAIR, VVA NATIONAL AGENT ORANGE & TOXIC EXPOSURES COMMITTEE

Mr. Chairman, Ranking Member Burr, and other distinguish members of the Senate Veterans' Affairs Committee, thank you for allowing us to appear here today. We appreciate you giving Vietnam Veterans of America (VVA) the opportunity to express our views in regard to the important pending proposed legislation before this Committee today.

S. 1780—HONOR AMERICA'S GUARD-RESERVE RETIREES ACT—A BILL TO DEEM CERTAIN SERVICE IN THE RESERVE COMPONENTS AS ACTIVE SERVICE FOR PURPOSES OF LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

Vietnam Veterans of America (VVA) favors enactment of this proposal. As should be readily apparent to all, the Reserves and National Guard have become integral and indispensable part of our Nation's Armed Forces, vital to our overall total force that enables our military to meet the stresses and strains of fighting global war on terrorists. This proposed legislation is just one more step in recognizing that ongoing contribution of those who serve in this manner, and is needed step toward treating their service in an equitable manner after their term of service is completed. VVA thanks Senators Lincoln, Hutchison, and Snowe for their leadership on this issue.

S. 1866—A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE ELIGIBILITY OF PARENTS OF CERTAIN DECEASED VETERANS FOR INTERMENT IN NATIONAL CEMETERIES

VVA favors enactment of this legislation. It has no cost to the government, does not require further use of National Cemetery lands beyond that already required for interment of the servicemember. It will mean a great deal to the relatively few parents who will be affected to be interred with their lost servicemember.

S. 1939—AGENT ORANGE EQUITY ACT OF 2009—TO AMEND TITLE 38, UNITED STATES CODE, TO CLARIFY PRESUMPTIONS RELATING TO THE EXPOSURE OF CERTAIN VETERANS WHO SERVED IN THE VICINITY OF THE REPUBLIC OF VIETNAM, AND FOR OTHER PURPOSES.

VVA reiterates our strong support for passage of S. 1939 the Agent Orange Equity Act, and the companion bill in the House of Representatives, H.R. 2254. VVA particularly thanks Senator Gillibrand of New York for introducing this proposed legislation. We must do whatever needs to be done, in this thirty fifth year since the end of the Vietnam war, to ensure that these veterans receive some measure of justice as soon as possible.

In the latest biennial update pursuant to the Agent Orange Act of 1991, the panel of the Institute of Medicine (IOM), of the National Academies of Science (NAS), unequivocally reiterated that there was no valid scientific reason for the exclusion of so-called "Blue Water" Navy veterans from the presumption of exposure to Agent Orange and other harmful toxins present in South Vietnam during the war. It is clear that the study performed by the University of Queensland regarding the desalination plants on board Australian ships at the time is directly applicable to American Navy personnel. Not only did the desalination plants on the American vessels work in exactly the same manner as those on Australian ships, they were manufactured and installed by the same company. The methodology for creating fresh water for both the boilers and for drinking, cooking, etc. actually had the perverse effect of concentrating dioxin in the "cleansed" water that was then ingested by the fliers and sailors on board.

It is important to note that the reason that the Australian government commissioned this study is that the Third Epidemiological Study of Australian Veterans of Vietnam showed that their Navy personnel actually had higher rates of cancers and other diseases thought to be caused by exposure to dioxin than their Army personnel. This prompted the government of Australia to commission the Queensland study.

Let me reiterate that the Australians have completed three epidemiological studies of all of their citizens who served in their Armed Forces during the Vietnam War, and they are now starting on a fourth such study. When they found anomalies, they then commissioned further studies to discover why. That is what responsible democracies do when it is alleged or suspected that their citizens who placed their lives on the line in defense of country have been harmed by said service.

The United States government has done no such epidemiological study of our veterans.

Even more egregiously, the VA Office of Research & Development currently does not fund a single study related to the long term adverse health care effects on our veterans or their progeny of exposure to Agent Orange and other toxic substances in Vietnam.

When the VA challenged the Australian study on Navy veterans and desalinization before the IOM meeting specifically considering the matters of American "blue water" Navy veterans' potential exposure to dioxin on May 3, 2010 as being "bad science", the VA officials could not say how or why it was bad science. When the scientists on the IOM panel asked the VA if they had done an epidemiological study similar to the three such studies done by the Australians, the VA had no response. When the same scientists on that panel asked the VA officials if they had funded an attempt to replicate the acclaimed and peer reviewed work of the study of Australian Navy desalination plants done by the University of Queensland, the VA had no real response except to say that they had failed to do so.

Further, that same VA Office of Research & Development (ORD), funded at an annual rate of more that a half a billion dollars, has yet to contract for completion of the replication of the landmark National Vietnam Veterans Readjustment Study (NVVRS) thereby making it a robust longitudinal study that will serve as a statistically valid national mortality and morbidity study for Vietnam veterans. From the testimony given in another Committee earlier this month, and in statements made to the General Accountability Office (GAO) and reflected in their testimony on this subject, "Progress & Challenges in Completing the National Vietnam Veterans Lon-

gitudinal Study" (http://www.gao.gov/new.items/d10658t.pdf ) on May 5, 2010, it is clear to us at VVA that the staff of the ORD and of VHA does not intend to make a good faith effort to complete this study properly.

It is clear to us that the VA ORD intends to act in a way that is plain unethical in regard to research that involves human subjects, and threatens to violate the assurances of confidentiality given to the original participants in the NVVRS twenty five years ago. That will guarantee that most reputable scientific institutions will not bid on completing this study given the way in which VA wishes to violate the original rules guaranteed in the Institutional Review Board rules for the study set at the onset of the original study, and that the veterans who originally participated will likely not do so again given the VA's bad faith effort to change the ground rules, and renege on assurances of confidentiality.

What does all of this mean in relation to the bill S. 1939 that you have before you for consideration? What it means is that there was no valid scientific reason for VA to exclude the "blue water" Navy veterans from the presumption in the first place. Further, it means that the permanent bureaucracy of the VA continues to do everything it can to prevent any decent scientific research to be funded by the United States government into the long term health care effects of exposure to Agent Orange on American who served in Southeast Asia during the Vietnam War, or our children, or our grandchildren.

It is clear that the right thing for that VA bureaucracy to do would be to recommend to the Secretary that he declare all of the "blue water" Navy veterans covered under presumption immediately, reverse course, and honestly try and successfully complete the NVVLS, and start to fund proposals to examine the epigeniological impact of exposure to dioxin and other toxins on second, third, and fourth generations of the progeny of Vietnam veterans, as well as the impact on the veterans themselves.

However, while it is clear as to what the right and just and honest thing to do is in this situation, it is highly unlikely that these leopards will change their spots and start to act decently. Therefore in regard to action by the Executive branch, we can only hope that Secretary Shinseki, who we do believe to be a good, honest, and decent man, will do the right thing despite the recommendations of the permanent ORD staff.

The veterans involved have been done a great injustice. That injustice needs to be made right. Early enactment of the Agent Orange Equity Act will provide such justice for many veterans who are now suffering and dying as a result of the harmful exposure to Agent Orange during the Vietnam War. We urge this distinguished Committee and the Senate to take the necessary steps to pass this bill as soon as possible.

S. 1940—A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO CARRY OUT A STUDY ON THE EFFECTS ON CHILDREN OF EXPOSURE OF THEIR PARENTS TO HERBICIDES USED IN SUPPORT OF THE UNITED STATES AND ALLIED MILITARY OPERATIONS IN THE REPUBLIC OF VIETNAM DURING THE VIETNAM ERA, AND FOR OTHER PURPOSES.

Vietnam Veterans of America (VVA) also thanks Senator Gillibrand for sponsoring this very important bill requiring the Secretary of Veterans Affairs to perform a study on the effects of Agent Orange and other toxins used in Vietnam on the children of veterans so exposed. Perhaps the most emotional issue for our membership is the clear suffering of what we believe is an extraordinary rate of birth anomalies and abnormally high rates of disease and adverse health care conditions in the children, and in the grandchildren, of Vietnam veterans. We do urge that this distinguished committee consider amending the language of this bill to direct this study to also review the extent of such conditions in the grandchildren and great-grandchildren of veterans exposed to Agent Orange and other toxins in Southeast Asia, or veterans so exposed elsewhere in the world where these chemicals were used by the United States military during that same period.

This will provide a starting point for assembling the evidence that may be available regarding these high rates of disease and conditions in this population. VVA does caution, however, that since there has been a consistent policy, particularly in the past eight years, of not providing any Federal funding for original science in this area that there may not be nearly enough peer reviewed scientific work for the VA to review. Therefore, VVA urges that early passage of S. 1940 be followed up by steps to ensure that there are funds available specifically for original scientific studies into the effect of dioxin and other toxins on the progeny of Vietnam veterans.

VVA has been working on just such a proposal and looks forward to discussing these issues and working with you, your distinguished colleagues, and your able

staff, Mr. Chairman, to bring forth a proposal that will accomplish this and other purposes.

S. 3035—VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010, TO REQUIRE A REPORT ON THE ESTABLISHMENT OF A POLYTRAUMA REHABILITATION CENTER OR POLYTRAUMA NETWORK SITE OF DEPARTMENT OF VETERANS AFFAIRS IN THE NORTHERN ROCKIES OR DAKOTAS AND FOR OTHER PURPOSES

Traumatic Brain Injury suffered by our troops in Afghanistan and Iraq has become so relatively common that its acronym, TBI, is becoming almost as infamous as PTSD. While this affliction is not new; it has only been so codified because of the carnage caused by IEDs, (Improvised Explosive Devices), another acronym that has been incorporated into the dialect of war. The Veterans Administration and the military medical system is already screening all returning troops for mild to moderate cases of TBI; to varying degrees of effectiveness. Those whose brain injuries are more serious are quite obvious to clinicians.

VVA does not object to the intent or the specifics of this proposed legislation/project. We would suggest that it incorporate an element that takes into account PTSD, which is often present when there is either polytrauma or TBI.

Further, VVA recommends that this project be coordinated with the Montana National Guard, which has become the singular model of how to effectively de-stigmatize and more effectively treat PTSD in those who choose to remain in the Guard/Reserves or active duty forces, as well as in general. Further, since this is the most rural military force that the United States has fielded since World War I, it is certainly appropriate that the VA start developing new models of how to deal with returning troops closer to their home, which is so often not in a major urban area. This would seem to be as good a place to start as anywhere, particularly because of the leadership of the Montana National Guard.

S. 3107—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2010, TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR AN INCREASE, EFFECTIVE DECEMBER 1, 2010, IN THE RATES OF COMPENSATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES, AND THE RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR THE SURVIVORS OF CERTAIN DISABLED VETERANS, AND FOR OTHER PURPOSES.

VVA supports this legislation. Disabled veterans and their families fall victim to the rising costs of living no less so than anyone else. S. 3107 would increase the current levels of disability compensation, additional compensation for dependents, the VA clothing allowance and the various rates of Dependency and Indemnity Compensation (DIC). The percentage of increase would be equivalent to the percentage of the cost of living adjustment (COLA) for Social Security beneficiaries, and would become effective as of December 1, 2010. These COLA increases are absolutely necessary to ensure that veterans and their dependents receive meaningful benefits, and to prevent them from falling through inflationary cracks.

S. 3192—FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010

While VVA is in general in favor of speeding up the process of adjudicating veterans' claims, there may well be some instances whereby, through no fault of the veteran, the time for appeal to the Court of Veterans Appeals should be extended in the interest of justice. Therefore, VVA favors passage of this proposal.

S. 3234—VETERAN EMPLOYMENT ASSISTANCE ACT OF 2010, TO IMPROVE EMPLOYMENT, TRAINING, AND PLACEMENT SERVICES FURNISHED TO VETERANS, ESPECIALLY THOSE SERVING IN OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM, AND FOR OTHER PURPOSES.

Vietnam Veterans of America (VVA) strongly endorses the clear good intent of this effort at a comprehensive act, and generally endorses much of what is in each of the major titles of this proposed legislation.

There are significant flaws in the section 3 outline for veterans' business centers, including a confusing mix of grants for various purposes to the proposed centers, and no overall outline of how the Small Business Administration (SBA) is to develop the organizational capacity to support such centers. Certainly there is nothing in the experience of the last five or six years that should lead anyone to believe that that SBA has any particular organizational capacity to much of anything at all beyond the Patriot Loans for veteran business owners or would be business owners. Further, the history of trying to secure matching funds for such endeavors is certainly less than salutary. None of the veteran business centers funded via any Fed-

eral entity that we are aware of actually was able to produce matching funds in the past decade.

Section 5 of the proposed Act, requiring that all DVOPs and LVERs veteran staff in the state workforce development agencies attend training within two years of being hired will require additional funding of about $2.8 million dollars per year for the next two years to implement. One can argue that this is a much needed and excellent proposal, and a good investment in these staff members who will be trained, that can only help them do a better job for all persons served by the state workforce development agencies, including veterans.

However, this title begs the question of holding the state workforce development agencies accountable for what is done and/or not done for veterans returning from OIF/OEF, disabled veterans, and veterans at risk of being homeless. Without real measures of effectiveness placed upon the state workforce development agencies that are directly tied to financial awards/rewards, experience strongly suggests that the states will not suddenly change their behavior and stop treating the DVOP/LVER program as anything but a "cash cow" and continue to give lip service only to veterans who are desperately seeking assistance in securing a job. The problem with this section is that it appears to take significant action while not fundamentally changing anything. Therefore it betrays the returning warriors.

The only responsible action if the Congress is serious about wanting to really help returning veterans get meaningful assistance to getting a job is to Federalize the DVOP and LVER positions, and make them employees of USDOL, training and requiring them to actually work with employers to place veterans into decent jobs that pay a living wage.

Sections 6 through Sections 16 all have significant promise, particularly the sections that redirect some significant Workforce Investment Act (WIA) funds toward veterans (although more such funds should be re-directed).

The central question that this proposal does not address is how to get the management of the One Stop Centers to be motivated to let their staff that is supposed to deal with veterans full time actually do their job, and support them in doing that job. Without a dramatic change in this behavior on the part of management and supervisory personnel in the state agencies, none of the rest of the titles in this legislation will work because there will be no effective workforce staff to match the potential veterans up with the possible training and job opportunities.

Mr. Chairman, VVA stands ready to work with you, your colleagues, and your staff to develop some possible mechanisms that will work and provide better services to returning veterans from the current conflict.

S. 3286—A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO CARRY OUT A PILOT PROGRAM ON THE AWARD OF GRANTS TO STATE AND LOCAL GOVERNMENT AGENCIES AND NONPROFIT ORGANIZATIONS TO PROVIDE ASSISTANCE TO VETERANS WITH THEIR SUBMITTAL OF CLAIMS TO THE VETERANS BENEFITS ADMINISTRATION, AND FOR OTHER PURPOSES.

One of the primary reasons for the "backlog" of claims at the Veterans Benefits Administration (VBA) is the poor development, preparation, and presentation of claims that are actually submitted to the VBA for adjudication. The problem is that there are just not enough properly trained and supervised preparers of such claims. This pilot program has the potential to make a significant difference in both the accuracy of claims adjudicated, and the increased speed in which reasonable decisions can be rendered when claims are properly presented in a uniform organized manner.

S. 3314—TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS AND THE APPALACHIAN REGIONAL COMMISSION TO CARRY OUT A PROGRAM OF OUTREACH FOR VETERANS WHO RESIDE IN APPALACHIA, AND FOR OTHER PURPOSES.

Additional outreach, education, and assistance to veterans and their families who reside in this very poor and much under-served region can only be a help in assisting these deserving veterans and their families to be accorded the benefits, rights, compensation, and services which they have earned by virtue of military service to country. VVA favors enactment of this bill.

S. 3325—TO AMEND TITLE 38, UNITED STATES CODE, TO AUTHORIZE THE WAIVER OF COPAYMENTS FOR TELEHEALTH OR TELEMEDICINE VISITS OF VETERANS, AND FOR OTHER PURPOSES.

VVA favors waiving of copayments for services delivered utilizing this new methodology for delivery of care in neuropsychiatry and counseling both because it en-

tails much less use of VA resources per patient contact, and because there have been no good clinical studies in the U.S. of the efficacy and effectiveness of this new modality for delivery of counseling services. VVA further urges the Congress to press VA to perform good clinical studies as to the effectiveness of various treatment modalities using this new technology, and to do so before we invest too many more tens of millions of dollars in fancy gear for teleconferencing or for so-called virtual reality treatment modalities. All use of such technology must be subjected to the same rigorous evidence based medical precepts that should govern the rest of VA delivered medical care.

S. 3330—VETERANS HEALTH AND RADIATION SAFETY ACT OF 2010, TO MAKE CERTAIN IMPROVEMENTS IN THE ADMINISTRATION OF MEDICAL FACILITIES OF THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES.

VVA favors not only much more rigorous controls and quality assurance for use of nuclear medicine, but particularly favors much more stringent quality assurance on the too many services currently contracted out by the VHA to the private sector, often needlessly and without systematic review as to whether these services could be more effectively and efficiently provided by full time VHA personnel.

S. 3335—VETERANS ONE SOURCE ACT OF 2010, TO PROVIDE FOR AN INTERNET WEB SITE FOR INFORMATION ON BENEFITS, RESOURCES, SERVICES, AND OPPORTUNITIES FOR VETERANS AND THEIR FAMILIES AND CAREGIVERS, AND FOR OTHER PURPOSES.

The VA has done such a consistently poor job of outreach and education of veterans and their families as to what benefits, services, and entitlements that accrues to them by virtue of the veterans' military service to country that the need for such a bill as this is virtually self-evident. VVA favors the intent of this proposal, and commends Senator

Klobuchar for taking the initiative to introduce this comprehensive legislation.

S. 3367—TO INCREASE THE RATE OF PENSION FOR DISABLED VETERANS WHO ARE MARRIED TO ONE ANOTHER AND BOTH OF WHOM REQUIRE REGULAR AID AND ATTENDANCE, AND OTHER PURPOSES.

VVA strongly favors this bill, which will correct an unintended consequence of other legitimate restrictions which had the perverse effect of greatly penalizing disabled veterans who are married to one another, and need aid and attendance in order to survive.

S. 3370—TO IMPROVE THE PROCESS BY WHICH AN INDIVIDUAL FILES JOINTLY FOR SOCIAL SECURITY AND DEPENDENCY AND INDEMNITY COMPENSATION, AND FOR OTHER PURPOSES.

VVA strongly favors this bill and any other proposal that has the effect of reducing redundancy, red tape, and making it easier for veterans and survivors to access their legitimate benefits and services, which were earned by virtue of the veteran's military service to country.

MULTIFAMILY TRANSITIONAL HOUSING LOAN PROGRAM—SENATOR BURR

In regard to possible improvements in the multifamily transitional housing loan program, VVA favors significant expansion of this program beyond five loans. We have been stuck at no more than five loans since this program was first enacted as a loan guaranty program in 1998. The animus of the permanent bureaucracy at the Office of Management & Budget (OMB) to this program from the outset continues to be a classic study in the irrationality of a runaway and virtually unaccountable fourth branch of government. Initially the OMB opposition was because it was a loan guaranty program, and therefore less subject to tight control by the OMB bureaucracy.

Whether this move to change this from a loan guaranty program to a direct loan program is due to finally acceding to bureaucratic wishes, or simply a reflection of a very different reality in the private capital markets due to financial problems of the last few years, we do not know. However, we do know that if this program is worth doing, and we believe it is, then after being in existence for more than a decade it must be expanded beyond something that can and is used for the benefit of only one or two private investors.

This program in an expanded form is very much needed if we are to virtually eliminate, or at least to dramatically reduce, homelessness among veterans within the next five or six years.

Mr. Chairman, VVA again thanks you for this opportunity to express our views here today, and will be pleased to answer any questions you or your colleagues may have.

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RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO RICHARD WEIDMAN, EXECUTIVE DIRECTOR, POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

*Question.* Recognizing that DVOPS and LEVRs are state employees, how do you think Congress can create better opportunities for these critical personnel?

Response pending.

[Items were not received by the Committee by the deadline for printing.]

Chairman AKAKA. Thank you very much, Mr. Weidman.

This question is for all of the panelists. I think we all agree that today's list of pending bills represents a broad agenda to help VA adapt to the changing needs of veterans and their families. However, I think it is important to ask you about what is not being discussed at this time.

So, my question to the panel is: is there an important issue among your membership that we have not discussed today? Mr. de Planque?

Mr. DE PLANQUE. Two things that I would note, Mr. Chairman, and thank you for the question; and we touched on this briefly in our oral statement earlier. There is a bill that is addressing veterans unemployment, but we are not specifically looking at VA's own hiring practices of veterans and if there are ways to enhance that to increase the size of the workforce. It varies within agency, within VA. The Cemetery Administration, for example, has 71 percent veterans employed, the Veterans Health Administration is around 26 percent, and the overall is around 39 percent. So the American Legion believes strongly that those numbers should be higher.

We do not have any specific legislation on the agenda today in terms of enhancing and examining whether or not we are meeting the needs of the women veterans who are coming out into the veteran population now, the women servicemembers, and that is another key concern.

There are a lot of initiatives. There are a lot of programs that have been going forward, and VA has been doing a very, very good job on that. But we want to make sure that the oversight is there to ensure that the needs of those veterans are being met as well.

Chairman AKAKA. Thank you, Mr. de Planque.

Mr. Hilleman?

Mr. HILLEMAN. Thank you, Mr. Chairman. It is quite a large question. This hearing today touches on nearly everything that VA and this Committee deal with. The one thing that I thought was absent from this hearing, which cannot be encompassed by one hearing or even by multiple hearings, is the claims backlog. This Committee has done tremendous work in trying to do the oversight necessary to bring down that backlog, and we want to encourage this Committee in every effort that it can to address the backlog.

We realize there is no simple fix, sir, but working with this Committee, the veterans organizations, and VA, we think that in due time we can see that trend corrected.

Thank you.

Chairman AKAKA. Thank you, Mr. Hilleman.

Mr. Weidman?

Mr. WEIDMAN. That is indeed a large question, Mr. Chairman, but I thank you for the opportunity.

VA does not have an extramural research program. Every one of the National Institutes of Science breaks their budget into basically two halves: one is Office of Intramural Research, those who work for the institute full-time; and Extramural Research, which then makes funds available to scientific institutions and universities all over the country.

VVA is deeply committed to increased medical research in this country and is the only veterans organization to be a member of Research America, which is a broad coalition that pushes hard for increases in budget at NIH, AHRQ, CDC, et cetera.

But VA does not award contracts outside, and, frankly, all of the research area at VA needs significant overhaul in terms of scientific ethics—and I can get into that, why we believe that—trying to crack Institutional Review Board guarantees of confidentiality on the National Vietnam Veterans Longitudinal Study, which they still have not even contracted out, much less completed. So, that whole area really needs to be looked at.

The second has to do with accountability and that corporate culture, particularly within the VHA and VBA, is still not there. We believe in Secretary Shinseki. We believe he is striving mightily to transform that corporate culture into one where people are held accountable, particularly managers. But there is such a long way to go for, number 1, accountability and, number 2, VHA in particular is more opaque today than it was 10 years ago, and we need to reverse that and start to open up and let the sunshine in to what is happening with all of those many, many billions of dollars that you and your distinguished colleagues on this Committee and in the Senate have passed to have an unprecedented increase in that budget. Yet we do not know what is happening, and it is not translating necessarily into what we would need.

Last, but not least, is transformational change when it comes to how we approach employment and building a true national strategy for addressing veterans employment.

All of the things in Title 38 are predicated on there being a functioning public labor exchange. But we no longer have a national public labor exchange, period. It just simply does not exist. So, we need to rethink how we are actually going to deliver services to the individual veteran, whether they be on the Big Island in Hawaii or whether they be in northern Maine or whether they be in a remote village in Alaska. We need to rethink that entire paradigm and design something for the 21st century because, frankly, the pace of deterioration of the public labor exchange has left us high and dry.

Chairman AKAKA. Thank you very much.

Mr. Tarantino?

Mr. TARANTINO. Senator, before I get into it, I would just like to take the opportunity to thank you, the Committee, and your staff for allowing me to be here today. Many of our members as well as our staff are still serving in the military, and the work that you have done over the past few years has had a real direct impact on

their lives. So, I would like to thank you for having their backs and for continuing to have their backs in the future.

To address the question, Senator, the one thing that I was a little surprised not to see is something addressing the disability claims backlog. I echo the comments of Mr. Hilleman. You know, I think we are seeing that this is being fought on several fronts. There is the technology piece I think the VA is working on right now, and we are encouraged by the progress of the VBMS and VRM. So, we ask Congress to hold the VA to their stated goals and to their deadlines to make sure that we do not feel like Charlie Brown with the football, as we seem to have every year that the VA comes out and makes promises.

We see that there are echoes of a cultural shift within the VA—talking about changing the work credit system—and we encourage the Committee to continue to press the VA into making those cultural shifts and do not allow them to become complacent.

I think there are things that we can do, that this Committee can do to streamline the overall process. I think that S. 3348 is a great example of that, a small procedural change that we can do to cut the red tape that Senator Brown had talked about earlier: small procedural changes like fast-tracking certain disabilities, like sending a Notice of Appeal with the Notice of Decision, cutting 60 to 120 days out of the process. That can be done legislatively, what we have all talked about in this room. We have been talking about them for years. And given the statements that have come out of the VSO community, the Senate and the House, and the veterans community over the last year or two, I think we have an opportunity this year to address these issues. So, we are hoping to see in the next legislative hearing very soon a bill that encompasses some of these changes.

Thank you.

Chairman AKAKA. Thank you very much.

Before I call on Senator Burr, I would like to ask you, Mr. Oates, whether you have a comment on this question.

Mr. OATES. Thank you, Chairman. The committee that I deal with, which is the Agent Orange and Other Toxic Exposures Committee in the VVA, has several issues. One of those not mentioned here is the issue regarding Vietnam veterans and the combined exposures that they were exposed to. The Agent Orange Act of 1991 established that the IOM, through the Veterans Agent Orange Study, would look at the issue of herbicides and their components. However, the Vietnam veterans were exposed to much more than that.

In Operation FLYSWATTER, they were exposed to organic phosphates in the form of malathion where the planes flew over every 9 to 11 days, over the major troop areas, and sprayed them with an insecticide, malathion, which has been shown to cause Parkinson's disease and other neurological diseases. Nothing has been done in regard to Vietnam veterans to look at the combined exposures.

Another example of combined exposures in Vietnam veterans is the issue of taking the chloroquine pill, which is an inhibitor of an enzyme that helps you metabolize neurotoxins. And we were taking

the pill that limited the ability of your body to get rid of neurotoxins at the same time we were being exposed to neurotoxins.

So there are a lot of issues with combined exposures that our committee is concerned with, trichloride ethylenes that were used in all types of solvents in Vietnam, and especially in the Navy.

The other issue that the VVA committee is concerned about is in regards to the Blue Water Navy, in regards to—I think we can see it in the gulf oil spill. When Agent Orange was sprayed and the herbicides other than Agent White, which was a water-soluble one—they used diesel fuel to spray these. They were mixed with diesel fuel. And, of course, one of the major areas where these were sprayed were along the rivers that the Viet Cong would use to bring in supplies. A large quantity of this was sprayed on these rivers. You can see by the oil spill in the gulf how fuel and oil quickly can move and how far it can move, and being suspended in the diesel fuel and not being water-soluble, that is one of the ways that the dioxins got out to the Blue Water Navy folks, and we are concerned with that.

Birth defects is a big issue with our committee. We firmly believe that when you send a servicemember into harm's way, because of the battlefield toxins and those toxins that are not on the battlefield, you are also sending the future generations of these servicemembers' offspring into harm's way, and we think that that needs to be dealt with.

As I listened to the testimony of the VA earlier and they indicated that in 1940 it was too difficult, it brought me back to my 1st Infantry Division that I served with in Vietnam, and the motto of the 1st Infantry Division was, "No mission too difficult, no sacrifice too great. Duty first." And I think that would be a good motto to take back in dealing with 1940.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much.

I just want to note that we have a hearing planned for next month on the backlog, so that is why I wanted to hear from you about things that have not been mentioned. So, thank you very much, Senator Burr, for your questions.

Senator BURR. Thank you, Mr. Chairman.

Rick, you said in your testimony in relation to S. 3377, and I want to quote you, "The animus of the permanent bureaucracy at the Office of Management and Budget to this program from the outset continues to be a classic study in the irrationality of a runaway and virtually unaccountable fourth branch of government."

Mr. WEIDMAN. You stated that quite well, sir.

[Laughter.]

Senator BURR. If you cannot tell, I am having my own problems with the Office of Management and Budget as well.

Moving forward, though, how can we prevent this from happening again?

Mr. WEIDMAN. You could start by making sure that—talk to Mr. Orszag about ensuring that his agency follows the Veterans Employment Opportunities Act or veterans preference in their hiring. The Office of Management and Budget has less than 1 percent veterans on their permanent staff, and the last time we checked, they had zero disabled vets. For that to happen in Washington, it cannot

happen by accident. It can only happen as a result of a conscious, ongoing, systematic animus toward employing people who have served our Nation while in the military and who have been disabled as a result. So that is the first place to start.

The second is—I do not know how you do this. I was involved in the passage of the original bill more than 10 years ago, and it was designed then to bring private capital into the problem of getting adequate transitional housing for homeless veterans. There was some concern about it so we reduced the number from ten to five loans, and the Office of Management and Budget put an analyst on it, Ms. Toni Hustead, who was the head of the area that dealt with veterans at that time. She got it totally confused with the direct loan program by the Department of Agriculture, so they said the cost of the $100 million loan guarantee was going to be $68 million, which we said that is preposterous. You are comparing apples and oranges. You are comparing direct loans to a very, very poor population to a loan guaranteed to people who have demonstrated expertise in large projects and bringing—financing and bringing to fruition large projects that will be self-sustaining.

We finally had an extraordinary meeting at VA where VA people were actually arguing on our side against OMB that we were correct and that they should score it much lower. I think CBO scored it at $8 million over the life of the program, the 10-year life of the program. In the end, everybody was excited that OMB acceded that we were correct, though I was watching Ms. Hustead. While everybody else is buzzing and talking, I said, "Let me ask a key question. Toni, are you going to change your mark?" She smiled and said, "No, I am not." Therefore, the mark stayed at $62 million and delayed another 2 years us getting that bill enacted. And then they did not allow any loans for the first 6 years of the program. Now they want to flip it over and make it a direct loan.

First, we do not object to that, but what we do object to is not accessing capital asset markets in a reasonable way to bring to bear the problem of adequate housing, and particularly adequate—well, both adequate transitional and adequate permanent housing for low-income and formerly homeless people; and, second, artificially limiting a program that is clearly designed to thwart the will of the Congress. We have a real problem with that, irrespective of administration, and it needs to be straightened out because that is what I would call an unaccountable fourth branch of government who makes decisions, gainsaying in some cases both the executive branch political appointees and the Congress. Nobody can seem to hold them accountable. We have a problem with that, sir. We fought to protect the Constitution, and we do not see a fourth branch of government anywhere in the Constitution.

Senator BURR. Let me duly note that I have been as critical of every Office of Management and Budget before this one, so I am not singling this one out for some unique treatment.

Do any of you have any suggestions as it relates to S. 3377, as to how it can be improved to accomplish the end goal of making sure we maximize transitional housing opportunity?

Mr. WEIDMAN. I would not limit it to five. Expanding the criteria and having the Secretary publish criteria of people who are creditworthy and have a history of bringing to fruition large projects is

a reasonable and prudent thing to do, but there is no reason at this late date to limit it to five because that field is not that limited anymore, and you literally have hundreds upon hundreds of skilled providers out there who have transitional housing programs with services that are working. We need more options for people to be able to get financing, to create even more projects in high-need areas.

Senator BURR. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you, Senator Burr.

Senator Murray?

Senator MURRAY. Thank you very much, Mr. Chairman.

Tom, I wanted to start with you. First of all, I want to thank you and the IAVA for all your help working with my staff as we developed the veterans employment bill. I do have a few questions about the vocational and on-the-job section of the bill, and I do know that about 16,000 veterans are trying to get vocational training, yet they cannot access the new GI bill as it currently stands. Those are really the groups that we are trying to focus on within this legislation, and I wanted to ask you if you could explain to the Committee some of the gaps that we are seeing with the current vocational benefits program for our veterans.

Mr. TARANTINO. Well, thank you very much, Senator. To start off, we only really need to look at history to explain why this is so important. Over half of the people that used the World War II GI bill did not use it for a 4-year degree. They used it for vocational training, for on-the-job training. They used it to build an educated workforce. And what we are seeing in this population of veterans is something similar. You are looking at the practical issues of people who want to obtain a vocational career and who cannot do that because of a technical issue with the GI bill. If I wanted to get a commercial trucking license, I can do that at Clark Community College, but I cannot do that at the AAA School of Trucking. So it is an almost laughable omission in the original bill, and this is one of the things we aim to fix.

Also, we are looking at a population of highly skilled workers that are coming out of the military such as combat medics, mechanics, truck drivers who can drive anything from a tank to, you know, an 18-wheeled vehicle; but when they leave the military, they are barely able to drive an ambulance in the civilian world. They have to start over from scratch. They have to start over as apprentice mechanics after sometimes 15 years.

So, by allowing these on-the-job training and apprenticeships, by allowing vocational schools into the GI bill, we are in the back end correcting something that we need to correct ultimately with our military vocational and certification program. We are allowing veterans to transition into a world more laterally so that a senior noncommissioned officer can translate into a civilian position that reflects their service and their level of expertise.

Senator MURRAY. I assume you are hearing from a lot of veterans who are facing those kinds of barriers, as I have been.

Mr. TARANTINO. Every day we hear it through our GI bill Web site. We hear it over the phones. We hear veterans all over the country who call us and say, you know, "I want to go get my EMT license, but I do not have a community college or university near

me. What am I going to do?" I unfortunately have to tell them they have to wait or they have to move, which, I mean, if someone told me that, I would probably want to punch them in the face.

So, I hear their frustrations every day; and I thank you for including them in this bill.

Senator MURRAY. Yes, and I would just say for the Committee's knowledge, the veterans I have talked to, they tell me how their peers who graduated with them from high school or community college many years ago went off into the regular civilian work world, got work experience, on-the-job training, paid for by their employers. They went into the service, went to Iraq or Afghanistan, had the same kind of training by the military, came back and now they are required to go back to school, which is not covered by the GI bill.

So, this is to me a real issue that we need to address, and that is why I have included it in this bill. I want to thank you for your help with that.

Mr. TARANTINO. Thank you, Senator.

Senator MURRAY. Eric, I want to thank you and the VFW, too, for your support and work with us on this. I know that GI bill equality is very important to the VFW, too, and I wanted to ask you what changes would the VFW like to see made to the Guard and Reserve Select Reserve GI bill.

Mr. HILLEMAN. The Guard and Reserve Select Reserve GI bill is commonly referred to as Chapter 1606, I believe. That group of individuals has never activated outside of their military training or outside of their vocational training in uniform. That group of individuals is currently paid for by DOD under that program, which creates an interesting relationship with the rest of the GI bill where that section of the program languishes under DOD's willingness to fund.

One of the suggestions that the VFW has maintained is that if that program were put on parity at the rate of 30 percent to the current GI bill, it would fit with the structure that Senator Webb put forward in graduating and rewarding equitable service with equitable benefits. So, we would probably advocate for 30 percent for them across the board.

Senator MURRAY. OK. Thank you.

Ian, I want to thank you and the American Legion for their support of this, too. In your testimony you mentioned the Disabled Veterans Outreach Program Specialists and Local Veterans Employment Reps, the DVOPs and LVERs. What are the shortfalls you see of the training support for those groups?

Mr. DE PLANQUE. Thank you, Senator. The main problems that we are seeing in terms of outreach and reaching into the civilian sector, it is that the programs as they exist now, these programs are very good, they are very important for getting the veterans overcoming the barriers and getting them marketable working on the local level. It is not robust enough in the present system. The ability to translate the skills, as was mentioned earlier, translating the skills from the military sector to equitable civilian sector skills, there is not a reconciliation between them right now. Therefore, with the bill and with enhancing that, particularly with reaching toward the disabled veterans as you are going into the outreach,

being able to take those skills, translate them across and have an understanding between that on the local level, because the local level is the easiest level to access those veterans. That is—what things seem on the national level or in a larger scope may be there, but it is not translating down to the local level as much, which is what we would like to see enhanced.

Senator MURRAY. All right. Mr. Chairman, my time is up. I do have some additional questions. If I could submit them for the record, I would really appreciate it.

Chairman AKAKA. Yes.

Senator MURRAY. Thank you.

Chairman AKAKA. Thank you very much, Senator Murray, for your questions.

Let me just ask this one. Mr. Tarantino, would you like to comment on my bill to clarify that the failure of VA to notify—and this is a notification issue—to clarify that the failure of VA to notify a veteran promptly of a filing error to forward the document to the court should not deprive a veteran of the right of review or appeal, and that is S. 3348.

Mr. TARANTINO. Well, thank you, Senator. IAVA completely supports this bill. Our number 1 priority this year is to reform the disability claims process and that includes the appeals process. When a veteran tries to file an appeal, it is incredibly—when a veteran tries to file anything with the VA, it is an incredibly confusing process, especially with the appeals process. They have been dealing with their regional office for anywhere, you know, from 6 months to 2 years, and so it is only logical that they would go directly to where they know.

The fact that the VA would deny an appeal because of their own inefficiencies is absolutely ridiculous, so I think this bill fixes an error that I think we can all agree should not be there. And it corrects an injustice. I think it is little things like this, little procedural changes that allow the claims process and the appeals process to enter into the modern world, which are going to be critical toward reducing the backlog long term. We talk about this backlog, we talk about numbers, and I think a lot of my colleagues here have used this analogy. It is like talking about a fever but ignoring the disease. The disease is not the backlog. The disease is a VA process that was developed when the world moved at the speed of mail and when the world did not hold expectations of customer service, information access, and efficiency which we hold today. I think S. 3348 is a great example of one of those small changes that we can make to bring that system more into the modern world and do what we are supposed to be doing, which is to provide our veterans with meaningful benefits that they deserve.

So, I thank you very much, Senator, for putting this bill forward.

Chairman AKAKA. Senator Begich has submitted a bill that would eliminate co-payments when veterans use telehealth services. This is a question on telehealth. For all of the witnesses here, how do your members feel about using telehealth solutions? Mr. de Planque?

Mr. DE PLANQUE. Thank you, Mr. Chairman. Telehealth is one of the important steps in reaching out particularly to rural veterans or veterans who do not have as much access. So, if a veteran has

an opportunity to access the benefits that they otherwise would not be able to access because of geography, then it is an improvement for them, and that is something we consider important.

We have a growing segment of rural veterans in America. It is a growing segment of the population. And many of those veterans have no qualms whatsoever about accessing telehealth. Telehealth would be a great respite, certainly better than driving 250 miles to try to get to a medical center. So, if there is anything that can make it easier to have access to those benefits, that would be an improvement.

Chairman AKAKA. Mr. Hilleman?

Mr. HILLEMAN. Mr. Chairman, our members are pleased to have the opportunity to use telehealth because without telehealth in some areas, there is nothing, or there is a drive for 500 miles to the nearest local medical facility. So, we have long maintained that telehealth is a very affordable way for individuals to access health care, and we think if employed properly it would be a more cost-effective benefit to VA across the board.

Chairman AKAKA. Mr. Weidman?

Mr. WEIDMAN. Mr. Chairman, we are very much in favor of using telehealth, particularly for remote locations like some of the outer islands or many areas in Alaska, but also in rural areas.

The one thing we would caution, however, is VA's pell-mell rush into telehealth for telecounseling, if you will, for neuropsychiatric counseling. We have only been able to find two clinical studies that proved the efficacy of this, and both of them by the same individual, an academic, a respected academic out of Toronto, Canada, but none in the U.S. So, on many of the things that VA is rushing pell-mell into that sound great—like virtual reality and teleconferencing to supplant in-person traditional cognitive therapy and pharmacological therapy—we would caution that they need to do clinical studies before we commit tens of millions of dollars and structure things on something that may not prove out over the long run to be as effective as we hope. It is promising, but we need to do the studies.

So, we endorse it generally, but would caution that we need to have clinical studies to find out how well is it actually working for different kinds of veterans.

Chairman AKAKA. Mr. Tarantino?

Mr. TARANTINO. Thank you, Senator. I think it is important to note that, at least of our members, you know, you do not use telehealth because it is just such a great user experience and it is really cool; you use telehealth because you have to. You use telehealth because it is impractical for the VA to build a brick-and-mortar building in every community in America, as much as that would be awesome, but just does not make any sense. It is both logically and fiscally unsound for a veteran to drive 8 hours just to get a blood test. So, we are forced to use telehealth; so we think this is an excellent idea. We think it is something that the VA needs to look into.

I do echo Mr. Weidman's concerns, but we fully support the bill, and we do not think that veterans should be penalized and charged for being forced to use a method that the VA otherwise would have seen them for.

Chairman AKAKA. Thank you very much.

In closing, I again thank all of our witnesses for appearing today. I look forward to working with all Members of this Committee as we develop legislation based on today's hearing for a markup. As I said in my opening statement, moving legislation with significant mandatory scores will prove difficult. As Chairman, I am committed to ensuring that this Committee does all it can to ensure that veterans receive the benefits and services which they have earned through their service to this Nation, and I pledge my continued support for this goal as we move forward.

I want to thank you because we know that to do it well we need to work together on all of this, and I look forward to that, too.

So this hearing is adjourned.

[Whereupon, at 11:14 a.m., the Committee was adjourned.]

# A P P E N D I X

PREPARED STATEMENT OF HON. KIRSTEN E. GILLIBRAND,
U.S. SENATOR FROM NEW YORK

Mr. Chairman, Thank you for holding this hearing today on the Agent Orange Equity Act of 2009, legislation that I have introduced to ensure benefits for hundreds of thousands of Navy veterans who are afflicted with devastating health effects due to Agent Orange exposure in Vietnam. Since 2002, they have been shut out of VA care for Agent Orange related illness and this legislation corrects that injustice.

We know that during the Vietnam War, the United States Military sprayed more than twenty million gallons Agent Orange, an herbicide used to remove foliage that was providing cover for many enemy fighters in Vietnam. We also know that this toxic chemical has had an often tragic effect on many of our soldiers, sailors, airmen, and Marines who served in Vietnam. They have been subjected to increased rates of cancer and other diseases and a study conducted by the Centers for Disease Control and Prevention reported that the rate of non-Hodgkins lymphoma in Vietnam veterans is fifty-percent higher than the general population.

There is a large body of science that supports the claim that sailors who were serving in the waters around Vietnam were exposed to levels of Agent Orange. However, since 2002 the VA has enforced an exclusive policy that bars individuals who cannot provide orders requiring "boots on the ground" in Vietnam from receiving coverage for Agent Orange. This policy fails to take into account the amounts of Agent Orange contamination that existed in waterways in and around Vietnam, as well as Agent Orange carried by drifting winds over ships in the vicinity of where it was being sprayed. In 2005 article in the Journal of Law and Policy, Dr. Mark Brown, the Director of the Environmental Agents Service for the VA, wrote that there is no scientific basis for excluding individual who served in close proximity to mainland Vietnam.

It is clear that Agent Orange exposure did not stop at the water's edge, and the current VA policy regarding Navy veterans is wrong. To highlight how absurd the "boots on the ground" rule is, even personnel who were stationed on Johnston Island and handled Agent Orange where it was stored and incinerated do not have the same access to benefits as those who served in-country.

This legislation honors the sacrifice of all Vietnam veterans, regardless of whether they served on land or at sea, by expanding presumptive Agent Orange benefit coverage. This bill will clarify the law and restore the intent of Congress to provide benefits to veterans who served, among other places, on Johnston Island, waterways, ports, harbors, waters offshore, and air spaces above Vietnam, Navy veterans who were onboard ships or aircraft and who spent time on the ground transporting barrels of Agent Orange, and those who served on ships close to shore who were inadvertently sprayed by drifting winds that carried Agent Orange.

We owe it to our Vietnam veterans to pass this legislation. This legislation is supported by the Veterans of Foreign Wars, Vietnam Veterans of American, and other organizations that join in our shared commitment to ensuring that our Nation's veterans are not denied the benefits that they have earned in the line of duty.

Mr. Chairman, our veterans who have already sacrificed so much cannot wait any longer, nor do they deserve to wait. Each day that we delay passage of this bill, Vietnam veterans continue to become ill and die before they are able to receive benefits. Because of the urgency of this issue, I request that your committee mark-up this legislation and expeditiously report it favorably to the floor for consideration by the full Senate.

PREPARED STATEMENT OF HON. WILLIAM P. GREENE, JR., CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Mr. Chairman and Members of the Committee: Thank you for inviting me, as Chief Judge of the United States Court of Appeals for Veterans Claims (the Court), to comment on the Committee's May 19, 2010, Legislative Agenda. Consistent with the Court's long-standing practice, I will not comment on proposals pertaining to Department of Veterans Affairs (VA) policy matters involving the provision of specific veterans benefits. Having the responsibility of conducting judicial review of VA's adjudication of benefits claims, the Court's position is best expressed in our decisions that may address those matters. I simply assure the Committee that the Court will continue to strive to decide all appeals as fairly and efficiently as possible under whatever laws Congress and the President decide upon.

I will, however, briefly address those bills that pertain to the filing of a notice of appeal (NOA), and consequently to the jurisdiction of the Court: S. 3192 and S. 3348. My statements, however, are not offered as an endorsement or denouncement of any of the legislative proposals. Rather, they are offered to emphasize, as appropriate, some factors that Congress may wish to consider when making its legislative determinations.

## I. THE VETERANS BENEFITS APPELLATE PROCESS

As background, it is worth recalling that the appellate process for individuals seeking veterans benefits from VA has two distinct venues: administrative and judicial. Within VA, a VA regional office generally processes the claim and renders the first decision. When a claimant is dissatisfied with that decision, he or she may, within a specified period of time, appeal to the Board of Veterans' Appeals (Board). If the claimant is dissatisfied with the Board decision, he or she may seek reconsideration by the Board or, again within a specified period of time, may seek judicial review of the Board decision by appealing to the Court.

The adjudication process within VA is designed to be paternalistic. Throughout the VA proceedings, the claimant and the Secretary work together to ensure that claimants may obtain benefits to which they are entitled by law. The Secretary must affirmatively assist a claimant by liberally reading the scope of the claim, gathering evidence to substantiate the claim, advising the claimant of what is needed to substantiate the claim, and providing the claimant with a medical examination when needed.

Decisions on claims at the VA regional office are subject to one review on appeal by the Secretary. The Board conducts that review if the claimant files an appeal to the Board within one year after the RO decision. The Board reviews the claim anew, without giving deference to the initial decision, and ultimately renders the final decision for the Secretary of VA. If the claimant seeks to appeal to the Court, he or she, like other persons seeking judicial review of agency decisionmaking, leaves the administrative process and enters the judicial appellate arena. In the judicial appellate process, the parties are viewed equally, and the claimant-appellant generally has the burden of demonstrating that the Board decision is either clearly erroneous or that there is some procedural error that prejudiced a favorable VA adjudication of the claim. If dissatisfied with a decision from the Court, an appellant has the right to appeal to the U.S. Court of Appeals for the Federal Circuit. If no relief is achieved at that level, the last resort is to seek review by the Supreme Court of the United States.

Through the Veterans Judicial Review Act of 1988, the U.S. Court of Appeals for Veterans Claims was cast into the unique role of a national court providing exclusive judicial review of final VA decisions. The paternalistic agency adjudication of VA claims becomes subject to independent judicial scrutiny to ensure that all of the laws and regulations governing VA benefits are fully implemented and applied.

How a claimant may bring an appeal before the Court is one area that has undergone significant inspection and change since the Court opened its doors twenty years ago. Recognizing the distinctiveness of the types of appeals that come to the Court and the parties that bring them, and acknowledging the fact that historically many appellants who seek review at the Court come without legal representation, the Court and Congress have made efforts to ensure that the Court is accessible and navigable to all seeking judicial review. Relative recent legislation that authorizes legal representation of veterans during the VA adjudication process may change expectations that these appellants will be unrepresented when filing their Notices of Appeal.

II. THE JURISDICTION OF THE COURT

All Federal appellate courts require as a first step for appellate review, the timely filing of an NOA. The Federal Rules of Appellate Procedure (FRAP) (which are the rules from which this Court initially modeled its Rules of Practice and Procedure) govern the filing of appeals in Federal civil and criminal cases. Under FRAP 4, appeals involving the United States as a party (e.g., the Secretary of VA) must be filed within 60 days after judgment. Where the United States is not a party, the time period is shortened to 30 days after judgment. Both provisions allow for the appellant to move for a 30-day extension of the filing of the NOA upon a showing of excusable neglect or good cause.

The FRAP rules governing notices of appeal were in existence when the U.S. Court of Appeals for Veterans Claims was established. Because of the unique nature of appeals and the special class of appellants, Congress provided veterans and their families a 120-day period in which to file an NOA with the Court. No doubt, this 60-day increase over the norm for filing appeals in other Federal courts was an expression that these potential appellants should be afforded ample opportunity to present their appeals. With the Board required to provide the veteran with notice of the decision and specific information on how and where to file an appeal to the Court, that intent for the most part has been fulfilled.

The time to file an appeal has gradually broadened over the past 20 years with the 1993 enactment of the Court of Veterans Appeals Improvement Act, which applied a postmark rule to the receipt of notices of appeal, and with the application of equitable tolling to the filing period in 1998 (See *Bailey* v. *West* 160 F.3d 1360 (Fed. Cir. 1998)).

The postmark rule was adopted by Congress in direct response to the Court's dismissal of appeals where the NOA was mailed before the 120-day statutory timeframe, but received by the Court after that deadline. When that change was being contemplated by Congress, the Court's then Chief Judge, Frank Nebeker, identified to Congress what he thought were the advantages of a bright-line deadline for filing appeals and possible justifications for not adopting the postmark rule. Judge Nebeker identified the following issues for Congress' consideration in contemplating adoption of the postmark rule: the judicial resources that would need to be spent in determining the legibility of a postmark; the need to develop a body of case law on postmark-related issues; the relatively few number of prospective appellants that would be impacted; the desirability of finality in the appellate system; and the user-friendly nature of a bright-line standard for veterans.

As we know, Congress considered these factors and ultimately decided to enact the postmark rule. Our case law demonstrates that many of the factors identified by Chief Judge Nebeker did indeed result, and our case law developed a robust body of law relating to postmarks. Certainly some delay was added to the overall system; but likewise, appeals were heard by the Court that would otherwise have been dismissed.

In 1998, the United States Court of Appeals for the Federal Circuit held in *Bailey* v. *West* that the time limit for appealing a VA Board decision was subject to the doctrine of equitable tolling. This case law broadened the jurisdictional landscape by allowing the Court to entertain an appeal received after the 120-days where extraordinary circumstances beyond the appellant's control prevented a timely appeal. Similarly, a defective pleading within the time period or misfiling at a VA regional office or at the Board could be a basis for invoking the doctrine of equitable tolling. The statute governing the appeal process, 38 U.S.C. § 7266, did not allow for the extension of the 120-day window, but the practice at the Court for the next 10 years was to determine whether there was any basis to apply the doctrine of equitable tolling to NOAs received after the 120-day period. That changed when the Federal Circuit, in *Henderson* v. *Shinseki*, 589 F.3d 1201, (Fed. Cir. 2009), overruled *Bailey* and pronounced in light of *Bowles* v. *Russell*, 551 U.S. 205 (2007), that equitable tolling of the time in which to file an NOA was not permitted. Senate bills S. 3192 and S. 3384 are offered to respond to that case law.

As Congress considers refining the manner in which an NOA may be filed and accepted or received by the Court, I join in former Chief Judge Nebeker's sentiment that a bright line rule for filing notices of appeal would promote efficiency and finality in the appellate process. Regardless of the outcome however, the Court will apply the law as efficiently and fairly as possible. Will a change allow some appellants to have their appeals considered on the merits when they otherwise would be dismissed as untimely? Yes. Will it delay the time in which all veterans wait to have their appeals heard? Probably somewhat. Will it result in benefits for those appellants? Who knows. Will it prompt the need for a new body of law to be developed surrounding this issue? Certainly. Will it blur the line between the agency and the

Court? Perhaps. Will it confuse individuals who want to appeal our decisions to the Federal Circuit, where filing deadlines are more strictly enforced? Perhaps.

It is for Congress to weigh these factors and determine the course it deems best. I do offer the following specific technical comments on the two bills that address NOAs to the Court.

III. S. 3192

Regarding S. 3192, I offer the following comments:

Title: I recommend that the title be amended to clearly indicate that it is tolling the time for filing an appeal, rather than tolling the timing of review (for example: "Tolling of time for filing notice of appeal of final decisions of the Board of Veterans' Appeals.")

Section 2(a)(2): Before the decision in *Henderson, supra*, the Court's case law permitted the time for filing an appeal at the Court to be tolled if the Court found that the delay was due to "extraordinary circumstances" or for certain defective filings. In his remarks when introducing S. 3192, Senator Specter identified this proposal as a response to *Henderson*. S. 3192, however, contemplates tolling the time for filing an NOA upon a showing of "good cause." This standard is not defined in S. 3192 and may be subject to varying definitions and interpretations. Perhaps the Committee should identify an accepted definition of that term to be included in the bill language. Further, in general, "good cause" is a lower threshold than "extraordinary circumstances." Thus, although the stated purpose of S.192 is to restore the status quo as it was prior to *Henderson*, this language may provide even more permissive tolling than was in effect prior to *Henderson*. I do note that there may be a body of law addressing good cause that applies to FRAP 4(a). In the other Federal courts, an appellant may move for a 30-day extension of time based upon excusable neglect or good cause, if the motion is filed within certain timeframes. A similar provision would probably not be appropriate because our Court's liberal construction of what constitutes an NOA makes it easier for an appellant to simply file the NOA rather than file a motion to later file that NOA.

Section 2(b)(1) Applicability: S. 3192 Section 2(b)(1) would apply its provisions to an NOA filed with respect to a decision of the Board dated on or after July 24, 2008. For workload considerations, I would estimate that between July 2008 and now, approximately 13,000 appeals were filed at the Court. Of these, about 400 NOAs were dismissed as untimely. Potentially these NOAs could all be re-filed and there would have to be a determination made by the Court on whether there was good cause for that untimeliness. It is difficult to estimate how many other first time "good cause" NOAs could be filed related to Board decisions dated between July 24, 2008, and S. 3192's enactment.

Section 2(b)(2) Reinstatement: Because in veterans law the term "petition" generally refers to a petition for extraordinary relief, I recommend that this section be revised to eliminate use of the term "petition" and instead use "Notice of Appeal" or "notice" as appropriate.

IV. S. 3348

In his statement introducing S. 3348, Senator Akaka identified this proposal as a response to *Posey* v. *Shinseki*, ___ Vet. App. ___, No. 08–0240 (April 23, 2010). Among the judges of the Court, there are differing views on how to address the question of misfiled NOAs. In addition to Posey, I would direct the Committee's attention to other recent cases such as *Rickett* v. *Shinseki*, 23 Vet. App. 366 (2010); *Boone* v. *Shinseki*, 22 Vet. App. 412 (2009); and *Kouvaris* v. *Shinseki*, 22 Vet. App. 377 (2009).

I urge the Committee to consider whether the title should include the word "misfiled" when the result is to treat such documents as properly filed motions for Board reconsideration? Historically, "misfiled" is interpreted to mean that through neglect the potential appellant did not follow the clear instructions by the Board to mail the NOA specifically to the Court.

Creating the fiction of a motion for Board reconsideration when a document clearly is intended as a NOA (but because of the delay in transmitting it must be treated as a motion for Board reconsideration) may be problematic. This practice will not only add further delay to an already burdened VA system, but will needlessly draw on VA's limited resources. I defer, however, to the Secretary of VA to highlight issues he may recognize in that provision, and comment on how he will respond to any conflicts this may create within his regulations.

S. 3348 potentially has an internal conflict because it contemplates applicability to a document filed by a person who has not filed an NOA within the period identified in 38 U.S.C. § 7266(a), thus suggesting that VA needs to wait for the period

to end to determine whether that criteria is met. However, the provision then requires VA to act prior to the expiration of that time and in some instances, forward to the Court the document filed at the Board or the agency of original jurisdiction.

V. CONCLUSION

In conclusion, I assure this Committee that each judge on the Court strives to live up to the oath that we took when we were appointed to the bench—to administer justice and to faithfully and impartially discharge and perform the duties incumbent upon us as judges of a court of law. We appreciate the opportunity to engage in dialog aimed at strengthening and improving the veterans benefits adjudication system as a whole. However, we recognize that it is the legislative branch of government that must take the steps necessary to create the laws and the executive branch to administer the laws, and it is our responsibility to provide judicial review of the implementation of those laws. On behalf of the judges of the Court, I thank the Committee for the opportunity to share our views on this legislative agenda.

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## PREPARED STATEMENT OF PARALYZED VETERANS OF AMERICA

Mr. Chairman and Members of the Committee, on behalf of Paralyzed Veterans of America (PVA), we would like to thank you for the opportunity to submit a statement for the record regarding the proposed legislation. We appreciate the fact that you continue to address the broadest range of issues with the intention of improving benefits for veterans. We particularly support any focus placed on meeting the complex needs of the newest generation of veterans, even as we continue to improve services for those who have served in the past.

S. 1780, "HONOR AMERICA'S GUARD-RESERVE RETIREES ACT"

Paralyzed Veterans of America supports S. 1780, the "Honor America's Guard-Reserve Retirees Act". This bill incorporates "veteran" into the Guard and Reserve community. PVA supports recognizing and honoring all servicemembers, Guard or Reserve, for their faithful and honorable service in defending the United States of America. Serving in a volunteer force should be credited to the servicemember and not discounted, by no fault of their own, because they were not activated.

S. 1866, A BILL TO AMEND TITLE 30, UNITED STATES CODE, TO PROVIDE FOR THE ELIGIBILITY OF PARENTS OF CERTAIN DECEASED VETERANS FOR INTERMENT IN NATIONAL CEMETERIES.

Paralyzed Veterans of America supports S. 1866, a bill to amend title 38, United States Code, to provide for the eligibility of parents of certain deceased veterans for interment in national cemeteries. This legislation would provide eligible parents of certain deceased veterans' burial rights into national cemeteries, due to the servicemember not having a surviving spouse.

S. 1939, "AGENT ORANGE EQUITY ACT OF 2009"

PVA supports S. 1939, the "Agent Orange Equity Act of 2009," which expands the presumption related to exposures for veterans who served in the Republic of Vietnam and supporting missions. S. 1939 would also expand the law to allow Blue Water Naval Veterans and any other servicemembers awarded either the Vietnam Service Medal or the Vietnam Campaign Medal to be included for presumption. This bill, when enacted, will allow the VA to process Vietnam Veterans claims that suffer from illnesses linked to toxic exposure in a fast and more efficient manner.

S. 1940

PVA supports the intent of this legislation to require VA to carry out a study on the effects on children of exposure of their parents to herbicides used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era, and for other purposes. We believe this study will serve as a measure of research to broaden the knowledge of our veterans, VA, and the public communities of the exposure and its causes.

S. 2751

PVA's National office has no position on renaming the Department of VA Medical Center in Big Springs, Texas as the George H. O'Brien, Jr. Department of VA Medical Center. PVA believes naming issues should be considered by the local community with input from veterans organizations within that community. For construc-

tion projects and the authorization of new facilities, PVA believes that if a demonstrated need exists, VA should establish facilities that will provide the best care for veterans in the area.

S. 3035, "VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010"

PVA supports S. 3035, the "Veterans Traumatic Brain Injury Care Improvement Act of 2010." This legislation would require a report on establishing a Polytrauma Rehabilitation Center in the northern Rockies or Dakotas. It also requires the Fort Harrison Department of Veterans Affairs Hospital in Lewis and Clark County, Montana, to be evaluated as a potential location for such a Center or site.

We fully support the expansion of the polytrauma system of care in the VA. Polytrauma care is a critical service provided to veterans and servicemembers who endured multiple traumatic injuries while serving in harm's way to a body system. Any traumatic injury can result in life threatening physical, psychological, cognitive, or psychosocial impairments or disability. With more servicemembers returning with TBI and catastrophic disabilities every day, the need for this capacity continues to grow.

S. 3107, "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2010"

PVA support S. 317, the "Veterans' Compensation Cost-of-Living Adjustment (COLA) Act of 2010." This legislation increases the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for certain disabled veterans. As we have done in the past, we oppose again this year the provision rounding down the cost-of-living adjustment to the nearest whole dollar.

S. 3192, "FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010"

Paralyzed Veterans of America supports S. 3192, the "Fair Access to Veterans Benefits of 2010." This legislation would amend title 38, United States Code, to provide for the tolling of the timing of review for appeals of final decisions of the Board of Veterans' Appeal. This would provide flexibility in the claims process in favor of the veteran under unique circumstances due to medical or mental health problems. (An example of unique circumstances would be the case of Henderson. Due to Henderson suffering from paranoid schizophrenia, he was unable to meet the 120 day deadline for submitting his appeal and was denied the right to appeal to the United States Court of Appeals for Veterans Claims (CAVC)).

S. 3234, "VETERANS EMPLOYMENT ASSISTANCE ACT OF 2010"

PVA strongly supports S. 3234, the "Veterans Employment Assistance Act of 2010." This legislation addresses the unemployment among recently separated Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) veterans serving both in an active duty and mobilized status, which reaches out to active duty and reserve servicemembers. The bill also includes legislation regarding: business center programs, formal reporting to Congress on the productivity of Service Disabled Veterans Owned Small Business's, shortening the deadline from three years to one year for Disabled Veterans Outreach Program Specialist (DVOPS) and Local Veterans' Employment Representatives (LVER) to meet the prerequisite training requirements, integration and improvements to educational benefits, to name a few.

PVA applauds Senator Murray for introducing this bill and urges Congress to move quickly on this legislation that impacts the lives of many veterans whom are unemployed.

S. 3286

PVA supports the intent of S. 3286. This bill is intended to increase the effectiveness of outreach to veterans as it directs the Secretary to commence a pilot program on the awarding of grants to State and local government agencies and non-profit organizations to provide assistance to veterans with their submittal of claims. We believe successful outreach and awareness at the local level will result in an increased submission of claims. Additionally we encourage effective training of the individuals reaching out to veterans' as a measure of explaining services properly and effectively. We also urge that adequate funding for the Veterans Benefits Administration (VBA) be provided to keep pace with the potential increased number of claims filed.

S. 3314

PVA supports S. 3314, a bill that would require VA and the Appalachian Regional Commission to carry out a program of outreach to veterans who reside in Appalachia. The Appalachian Region has faced high rates of poverty, unemployment, substandard housing, low educational levels, and poor health care. The veterans' population in that area is often unaware of the benefits provided by VA or other local or state veterans' services. The rural geographical location impacts access to care and limits finding adequate transportation to VA appointments. We agree that continued outreach is needed, but quality care is paramount to improving the quality of life for veterans.

S. 3325

PVA supports S. 3325, a bill to amend title 38, United States Code, to authorize the waiver of the collection of copayments for telehealth and telemedicine visits of veterans, and for other purposes. Telemedicine has proven to be a cost effective service that connects the specialist via telecommunications to the veteran. It has been particularly useful in the rural setting. This is a new era of health care delivery and VA is doing its part in keeping up with technological advances to provide innovative solutions to the health care needs of veterans.

S. 3348

PVA supports S. 3348, to amend title 38, United States Code, to provide for the treatment as a motion of reconsideration of decision of the Board of Veterans' Appeals of a notice of appeal of such decision misfiled with VA. This bill addresses the uncertainty involved with notices of disagreement or motions to reconsider an appeal. The legislation allows any written statement of disagreement from the veteran, with a Board of Veterans Appeals (BVA) decision and be treated as a motion received by the BVA within the 120 days appeal period, as a formal motion to reconsider.

S. 3352, "VETERANS PENSION ACT OF 2010"

PVA supports the intent of this bill, but would like to recommend the legislation be rewritten to allow any insurance settlement as excluded from the computation of pension. This will assist veterans during financial hardship while affording them the opportunity to replace a loss or damaged property.

S. 3355, "VETERANS ONE SOURCE ACT OF 2010"

PVA has no formal position on this legislation.

S. 3367

PVA strongly supports S. 3367, to amend title 38, United States Code, to increase the rate of pension for disabled veterans who are married to one another and both of whom require aid and attendance. This legislation provides a correction to Public Law 105–178, Section 8206, which increases the aid and attendance rates for veterans receiving VA pension but failed to provide the same increase to married couples receiving the same benefit. This bill will provide a long overdue additional $825 dollars to a veteran couple.

S. 3368

PVA does not support this bill due to current VA regulation, CFR 3.155, already incorporating filing of an information claim on behalf of a veteran by a Member of Congress, a duly authorized representative, or a "next friend." PVA believes there would be increased opportunity for fraud in initiating a claim without the knowledge or consent of the veteran. Additionally, there is no specified language of the level of proof a family member must provide to the VA that encompasses the claimants' level of physical capacity or mental incompetence.

S. 3370

PVA supports S. 3370, to amend title 38, United States Code, to improve the process by which an individual files jointly for social security and dependency and indemnity compensation. This legislation adds clarity to VA's interpretation of the law regarding the award of DIC and Social Security. The legislation would give VA authority to accept any documentation or electronic transmission as proof of eligibility in the case of a veterans' death.

DRAFT LEGISLATION ON THE MULTIFAMILY TRANSITION HOUSING LOAN PROGRAM

PVA supports this draft bill, to amend title 38, United States Code, to improve the multifamily transition housing loan program of the Department of Veterans Affairs by requiring the Secretary of Veterans Affairs to issue loans for the construction of, rehabilitation of, or acquisition of land for multifamily transitional housing projects instead of guaranteeing loans for such purposes. This legislation could be a particularly useful tool that could impact and end the era of veterans' homelessness.

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PREPARED STATEMENT OF JOHN PAUL ROSSIE, EXECUTIVE DIRECTOR, BLUE WATER NAVY VIETNAM VETERANS ASSOCIATION

To the Honorable Members of the Senate Veterans' Affairs Committee, Less than two weeks ago, I appeared before the House Committee on Veterans Affairs to testify regarding H.R. 2254. That bill is the sister bill to S. 1939. What I emphasized in that testimony was the fact that I am fighting to obtain veteran benefits for a class of individuals who have been carved out of the whole and are being set aside and treated differently from veterans who were often no further from them than a few hundred yards. Not because they are really so different that they deserve to be denied their earned veteran benefits, but because it is monetarily and administratively convenient the Department of Veterans Affairs to do so. In other words, as was brought out in the *Haas* Case, they are dong this simply because they can!

These veterans of the Vietnam War are not eligible for health care and compensation benefits because of an irrational decision by the Veterans Benefits Administration (VBA). VBA contends that since these service men and women were offshore or involved in 'secret wars' in the countries surrounding Vietnam (such as Thailand, Cambodia and Laos), they could not have been contaminated by a Chemical Warfare agent that may have become part of the ambient air saturation in that entire region and whose fingerprint has been found in the fat cells of polar bears. BVA denies that the dioxin in Agent Orange could have travelled from the spray nozzles of Ranch Hand aircraft to the open waters of the South China Sea. They have held onto their absurd position in the face of glaring evidence from global scientific and medical research that proves the offshore personnel had the same or higher probability of contamination by dioxin as did many of the soldiers who are receiving their veteran health and compensation benefits because of dioxin contamination.

NO DOCUMENTATION

Let's set aside for a moment that the VBA is insistent on subscribing to Medieval Science as relates to this planet's water cycle. Let's ignore for a moment the outright lies, broken promises, deceit and intellectual ignorance that has seeped out of the office of the Department of Veterans Affairs (DVA) and which has been noted on the public record by Chairman Filner and other members of the House Veterans' Affairs Committee.

Let's focus on what the hardest part of my job, as Executive Director of the Blue Water Navy Vietnam Veterans Association (BWNVVA) has been over the past 6 years as we've tried to help veterans claim their promised and rightful benefits. The majority of veterans being blatantly discriminated against, those who served offshore Vietnam and who served in Thailand, Cambodia and Laos, all have very a similar problem. Their service records lack the proper documentation to prove that they qualify for the narrow interpretation of the law set forth by BVA policy. It might be interesting to note that many of the veterans who receive their benefits from the BVA because of their boots-on-ground status also lack this same documentation within their records, but they are never asked to provide it. Any indication that they had their boots-on-ground in Vietnam is enough to qualify them for these benefits and no further questions are asked. Additionally, there is a campaign of plausible deniability surrounding the existence, use and consequences of hazardous materials. Bullets and bombs are hazardous enough. Chemical, Biological and Nuclear (CBN) agents simply add to the depth and complicity of the issue.

The lack of documentation indicates the lack of a paper trail recording where a servicemember was, what their exact duties were, and how and when they moved from place to place. No one kept those kinds of records, or such records were destroyed for lack of apparent usefulness. In the instance of those who were assigned to Thailand, Cambodia or Laos, many records are either intentionally non-existent or hidden under some sort of classification that makes access to them impossible. That classification is, at this point in time, nearly 40 years old. What could we have possibly done so that, 40 years later, we remain embarrassed to let the truth be known?

I'll answer that question as I expect it to be answered: "It is a matter of national security and can't be discussed." Senators of this Committee, it is 40 years later and if we committed crimes so heinous that they cannot be known after this much time, then this government owes an apology to the citizens of this country and to the world for having done them. If it is worse than the dirty laundry we now have hanging on the line, my mind truly stumbles at comprehending it.

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Governments and their military leaders must be the slowest learners on the planet. It is happening again. Or, rather, it appears that it is still happening. When our children returned from Operation Desert Storm with sicknesses that presented at an extraordinarily high rate, and it is almost 20 years after the fact that their health care and compensation benefits are just recently being acknowledged and made available to them, something is terribly wrong.

War is 'wrong' in the sense that it clearly shows that humans on this planet remain unenlightened. Use of CBN agents during warfare is 'wrong' because it reflects a total disregard for the wider environment of the world that extends far beyond the battlefield. Not documenting involvement of our Armed Forces personnel is 'wrong' because it puts them in a position that they are unable to show the proof needed to claim their earned veteran benefits once they leave active duty. We continue to use a system that keeps two sets of books that harms our current and future veterans by removing them, through their oath of secrecy, from the pool of veterans eligible for benefits they may need in their future.

Will our Special Operation Teams returning from Afghanistan and Pakistan be able to claim their benefits for injuries received while on classified missions? Will they be able to claim their benefits if they are caught in a friendly fire incident in Pakistan as our unmanned aircraft bomb a country we have not declared war on? Will the Marines, who, up until a couple months ago, were training at 29 Palms with Iranian posers but have recently switched to Pakistani posers, ever be able to file for veteran benefits if they are injured in any boots-on-ground operation in Pakistan?

Senators of this Committee, when will we see this nonsense stop? When will this country start thinking of the consequences of its military actions on the veterans of the future and be fully prepared to care for those who live through our wars? You have an opportunity to put policy into place that will guarantee the VBA will honor all our veterans by providing their earned benefits regardless of what future war they participate in. You now have the power to restructure the policies of the VBA, as well as the DOD, so that we don't continue to commit the same mistakes that result in the problems of lost or missing documentation that I am wrestling with today. I think it is time to admit that it is the lies that cause the most harm; not the truth. And we are sadly deficient in truth speakers.

Please help clean up the mess left from the Vietnam War of 40 years ago. And please put policy into place so that the veterans of the future can rest assured that any benefits that may be available to some will be available to all. Such policy is only common sense. And it is only a display of dignity and honor toward those we send out around the world to fight the wars we feel we need to have.

TODAY'S FOCUS

Senate bill S. 1939 is our focus today. It addresses the urgent needs of Vietnam veterans who honorably served their country as long ago as 40 years, and who are now in desperate need of health care and compensation for diseases found on the VA's list of presumptive diseases attributed to Agent Orange contamination. Those diseases are on that list for a reason. They flag the conditions that veterans of the Vietnam War display due to dioxin poisoning. Senate bill S. 1939 extends the benefits of health care and compensation to men who served in the direct vicinity of Vietnam who have those identical diseases. Do you actually think it is some fluke of Nature that the offshore and near vicinity personnel have those exact diseases? Did they all just happen to beat all statistical odds and come down with those conditions without the intervention of dioxin?

It does not matter how they came down with Agent Orange related diseases. It does not matter if the wind blew it or the water carried it or it appeared by magic on the decks of their ships. What does matter is there has been a concerted effort for more than a decade to eliminate the number of personnel that VBA is required to pay the bill to care all our Vietnam War veterans. Senators of this Committee, that is NOT ACCEPTABLE.

In the "Veterans and Agent Orange Update: 2008", the Institute of Medicine (IOM) opined that there was equal probability for dioxin contamination at sea as

on land. They recommended that offshore personnel be included in the presumption of exposure to herbicides in Vietnam. They stated that recommendation several times in that report. They presented an verification by a U.S. expert regarding a valid, scientific study done under contract to the Australian Government that describes quite clearly how dioxin-laden water taken into a ship's water treatment system not only ends up in a ship's potable water. It also describes quite clearly how the heat flash desalination systems on U.S. and Australian ships would amplify the toxicity of any dioxin molecules by 400%. This constituted a peer review of the Australian Study and the IOM passed favorable judgment on its conclusions.

Rather than accepting the IOM's recommendations, VA Secretary Shinseki ordered an 18-month study that literally duplicates studies already done to show the links between dioxin and offshore ships. By doing that, he successfully delayed receipt of health care and compensation benefits to Vietnam veterans by 18 months. Senators of this Committee, that is NOT ACCEPTABLE.

There are absolutely no additional studies required to settle this issue. There only remains the passage of S. 1939 to codify a law that was originally written in 1991 that did include offshore veterans and veterans in the proximity of Vietnam during that War. It was a law the VBA finagled its way around.

If you wait for the duration of those 18-months, you will be presented with an IOM report that once again concludes that anyone on the water within the combat zone defined by the Vietnam Service Medal offshore Vietnam should be included in the presumption of exposure to Agent Orange.

By not dealing openly and honestly with this problem, all you are doing is pushing a favorable decision in the matter further down the line, either for you to deal with later, or for your successor to deal with. I don't even want to know why. I just want you to realize that the longer you delay the more Vietnam veterans with offshore and near vicinity service will die due to your indecision. My recommendation to you is to grab this problem by the horns, wrestle it to the ground, and deal with it. Why are you so reluctant to settle this issue? What is it that scares this government so deeply that it is willing to ignore proven science and medicine? All we are asking for is recognition that we will be given the health care and compensation that will allow us to die with dignity and leave this world with less debt piled up for our surviving family. The only ones who will be applying for these benefits will be those who actually have disabilities from the listed diseases. Between approximately 2002 and now, these personnel have needed to pay for their own medical treatment and have watched their homes be repossessed and their families decimated by debt and a loss of basic human dignity.

Ladies and gentlemen of this esteemed Committee, that is NOT ACCEPTABLE. Please pass S. 1939 into law. Thank you for this opportunity to present my thoughts and feeling to you as you review pending legislation.

Respectfully,

JOHN PAUL ROSSIE,
*Executive Director,*
*Blue Water Navy Vietnam Veterans Association.*

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PREPARED STATEMENT OF CDR JOHN B. WELLS, USN (RET.), DIRECTOR OF LEGAL AND LEGISLATIVE AFFAIRS, BLUE WATER NAVY VIETNAM VETERANS ASSOCIATION

S. 1939

Good Morning Mr. Chairman and Members of the Committee. I appreciate this opportunity to present to you today concerning S. 1939. I intend to address my remarks in support of those who have been left behind. Our friends and allies, the Australians, who fought beside us on land and at sea in Vietnam and every conflict subsequent to Vietnam, have taken the lead in granting Agent Orange benefits to those who served outside of the land mass of Vietnam. They have also taken the lead in the scientific research in this field, which has recently been validated by our own Institute of Medicine.

By way of introduction, my name is John B. Wells and I am a retired Navy Commander as well as an attorney. I entered the Navy in February 1972 and served in the Engineering Department on five Navy ships. I was the Chief Engineer on three of those ships. I was also the Executive Officer, second in command, of a ship whose mission was to repair other Ships. I have deployed throughout the globe in both the Atlantic and Pacific Fleets, serving in the Mediterranean, the Atlantic, Pacific and Indian Ocean, the North Arabian Sea, the Norwegian Sea and the Persian Gulf. I retired from the Navy, as a Commander on 1 August, 1994. I graduated from

Duquense Law School night program with a Juris Doctor approximately 6 weeks prior to my retirement.

In the Navy I was qualified as a Surface Warfare Officer, Officer of the Deck (underway), Combat Information Center Watch Officer, Command Duty Officer, Tactical Action Officer, Navigator, and Engineering Officer of the Watch. I was also qualified for command at sea. I received a mechanical engineering subspecialty based on significant experience. My ships operated with units of the Royal Navy and the Royal Australian Navy. This included NATO exercises, RIMPAC exercises and other multi-national exercises and global operations.

I have testified before the Institute of Medicine's Seventh Biennial Agent Orange committee in 2008 and again before the Institute of Medicine's Blue Water Navy Committee on May 3, 2010. I also testified before the House Veterans Committee on May 5, 2010, in support of H.R. 2254, the companion bill to S. 1939.

It is impossible to provide direct evidence as to the dioxin content of the South China Sea and the waters off Vietnam in the 1960′s and 1970′s. Too much time has passed to be able to make that determination. The circumstantial case, however, is compelling. I believe this circumstantial case will eventually be validated by the IOM Blue Water Navy committee but such validation will take many months. While I was impressed with the interest and competence of the members of that IOM board, I am convinced that this study is neither necessary nor beneficial. As the IOM admitted before the House Committee, they only review existing documentation and do not conduct independent research. Testimony before the House Committee on H.R. 2254 established that the only relevant research is the various reports completed by the Australians for the Australian Department of Veterans Affairs. Moving forward with this study, which does not report until the summer of 2011, will only allow more veterans to die.

The history of the blue water Navy tragedy begins in Australia. In the late 1990's, the Australian Department of Veterans Affairs noticed a significant number of Agent Orange related cancers in Royal Australian Navy veterans who had never set foot on land in Vietnam. Dr. Keith Horsley of the Australian Department of Veterans Affairs met Dr. Jochen Muller of the National Research Centre for Environmental Toxicology and the Queensland Health Services (hereinafter NRCET) at a conference in Stockholm. Dr. Horsley addressed the phenomena with Dr. Mueller who agreed to conduct a study to explore the reasons for this apparent dichotomy. Dr. Horsley arranged for funding from the Australian Department of Veterans Affairs and commissioned NRCET to explore the mystery. Their report, entitled the *Examination of The Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins And Polychlorinated Dibenzofurans Via Drinking Water*, (NRCET study) was published in 2002. I have talked with the authors of that report via telephone and e-mail. My wife, who is a Louisiana notary and paralegal, and also an Australian native, traveled to Brisbane to interview the authors of the report.

At about the same time the NRCET report was published, the American Department of Veterans Affairs issued a change to their Adjudication Procedures Manual (M21–1 Manual) that deleted those soldiers, sailors and airmen who did not set foot on land in Vietnam from the presumption of herbicide exposure. This decision later led to the litigation discussed below.

As a threshold matter, the vessels of both Australian and American origin operated side by side in the waters adjacent to Vietnam. The missions were driven by the ship capabilities and not by nationality. There was no tactical differences between the operations conducted by ships of the United States and Royal Australian Navy.

The NRCET study noted that ships in the near shore marine waters collected waters that were contaminated with the runoff from areas sprayed with Agent Orange. NRCET Study at 10. The authors later reported to this office that estuary containing the dioxins extended more than three nautical miles from shore. This means that the contamination would have extended well past the gun line which was normally located 2000 to 5000 yards from shore. The distilling plants aboard the ship, which converted the salt water into potable drinking water, actually enhanced the effect of the Agent Orange. NRCET Study at 42. The study found that there was an elevation in cancer in veterans of the Royal Australian Navy which was higher than that of the Australian Army and Royal Australian Air Force. NRCET Study at 13. This was confirmed by the *The Third Australian Vietnam Veterans Mortality Study* (hereinafter 2005 Mortality Study). The NRCET Study at page 35 noted significant concentrations at Vung Tau, an area visited by Australian and American ships. Theories that the Agent Orange stopped at the water's edge are simply preposterous. Congress in enacting the Clean Water Act recognized that pollutants discharged from shore will contaminate the navigable waters, waters of the contiguous

zone, and the oceans. Anecdotal evidence reports Agent Orange in the waters of the rivers which then empty out into harbors and eventfully the estuaranine waters. Sailors aboard the HMAS Sydney noted that brown water runoff would go many kilometers out to sea. 2005 Mortality Study at 196. Da Nang harbor was identified as a serious Agent Orange "hot spot." Anecdotal evidence noted that clouds of Agent Orange were blown out to sea. Approximately 10–12% of the land area was sprayed with Agent Orange. In contrast everyone aboard a ship that distilled contaminated water from estuarine sources was exposed.

The distillers all work on similar principles to produce water (feed water) for the boilers and potable water for the ship's crew. Water is introduced from the sea and is passed through the distilling condenser and air ejector condenser where it acts as a coolant for the condensers. It is then sent through the vapor feed heater into the first effect chamber and into the second effect chamber where it is changed to water vapor. Vapor then is passed through a drain regulator into a flash chamber and passes through baffles and separators into the distilling condenser where it is condensed into water and pumped to the ship's water distribution system. Sea water not vaporized is pumped over the side by the brine pump. *Id.* This is the same process discussed in the NRCET Study. It was used by American, British and Australian ships. In fact many Royal Australian Navy ships were retired United States Navy ships or ships of the same class as the American ships. Those that were not of American design were often constructed by the British. They all used the same system. This system was used well into the 1990's. More recently a new system, reverse osmosis, is being adopted, but that did not see service during the Vietnam War.

Potable water was manufactured continuously along with "feed" water for the ship's boilers. It was a constant headache and as a Chief Engineer there were many times that I was given round the clock hourly briefings on the status of water. This was especially true in southern latitudes such as Vietnam since the higher ambient sea water temperatures reduced the efficiency of the distilling process.

As discussed in the NRCET Study the distilling process enhanced the effect of the dioxin. Additionally the dioxin was ingested orally through drinking water, food, oral hygiene etc. On land, the dioxin, once sprayed, would become embedded in the soil. Since the water systems of the ships would have been thoroughly contaminated, the dioxin would have adhered to piping and continued to contaminate in an ever increasing amount. The authors confirmed this in their discussions with my office. The cumulative effect of the contamination would have resulted in a very high concentration. It would have taken weeks and perhaps months to completely flush the system once the ship moved away from contaminated waters. The Australian study confirmed the enhancing effects of the shipboard distilling plants. NRCET Study at 42. In other words, the effect was even more pronounced than if the veteran had merely ingested Agent Orange by breathing it or by drinking water from a contaminated stream.

In their publication in the *Federal Register*, Vol. 73, No. 73, of April 15, 2008, the Department of Veterans Affairs complained that the NRCET study was not peer reviewed. Actually it was peer-reviewed and published. The report was presented to the 21st International Symposium on Halogenated Environmental Organic Pollutants and POPs in Gueongu Korea on 9–14 September 2001. It was them published in Volume 52 of Organohalogen Compounds (ISBN 0–9703315–7–6) which is published by Dr. Jae Ho Yang, Catholic University of Daegu, Korea. Please see http://espace.library.uq.edu.au/view/UQ:95837 (last visited June 13, 2008). More importantly, the study was prepared at the request of and for the Australian Department of Veterans Affairs who accepted the study. The study was cited in *The Third Australian Vietnam Veterans Mortality Study* (hereinafter 2005 Mortality Study) published in 2005 by the Department of Veterans' Affairs and Australian Institute of Health and Welfare and resulted in the Department's consideration of Royal Australian Navy Vietnam Veterans as potentially exposed Vietnam Veterans. The study was further reviewed at the request of the Institute of Medicine's Agent Orange Committee, by Dr. Steven Hawthorne of the University of North Dakota. He certified that the NRCET study was scientifically viable and that the conclusions, based on Henry's Law were correct.

In their *Federal Register* article, the DVA asserted that:

> "VA's scientific experts have noted many problems with this study that caution against placing significant reliance on the study. In particular, the authors of the Australian study themselves noted that there was substantial uncertainty in their assumptions regarding the concentration of dioxin that may have been present in estuarine waters during the Vietnam War."

This is a blatant misrepresentation of the author's position. When Dr. Caroline Gaus, one of the report's author was questioned on this point, she replied as follows:

> "The problem referred to in this comment is associated with estimating the exposure level of Vietnam Veterans, not with the study's primary finding that exposure to dioxins was likely if (i) drinking water was sourced via distillation and (ii) the source water was contaminated. As highlighted by the authors, the exact level of exposure via this pathway is uncertain due to the lack of data on contaminant levels in the source water during the Vietnam War. The attempt made by the study to estimate the level of exposure serves only as an indication that exposure may have been considerable (and depends on the concentrations in the source water). Hence, the problem lies in the lack of exposure information, not with the study. The study clearly demonstrates that if source water is contaminated, dioxins are expected to co-distill with drinking water.
>
> "This issue is also not related to the study's quality, but rather highlights one of its findings out of context. The study noted that, while increasing suspended sediment loads in the source water decrease the co-distillation of dioxins, dioxins still co-distill with water at the highest level of suspended sediment in the water tested (i.e. at 1.44 g/L 38% of 2,3,7,8-TCDD co-distilled in the first 10% of source water). If 10% of the source water is distilled, TCDD would enrich in the drinking water by a factor of almost 4 compared to the source water. This was confirmed by using water from a tropical estuary with naturally high suspended sediment loading, where 48–60% of TCDD co-distilled with the first 10% of source water.
>
> "As noted above and in the study itself, estimating the level of exposure via this pathway is difficult due to the lack of data on the concentrations of dioxins in the source water. The level of exposure would depend strongly on the dioxin concentrations in the source water (which would have varied from location to location) as well as on the amount and duration of water consumed for drinking and/or cooking.
>
> "The study attempted to provide an estimate on the concentrations of dioxins in source water (0.043–0.69 ng/L). While the uncertainty around this value is large (approximately in the order of a factor of 10 or more), it cannot be determined whether it represents an over- or underestimate (which would also depend on location). Hence, it would be difficult to determine whether the level of exposure was similar, higher or lower compared to veterans who served on land. However, the study demonstrates that exposure is likely to have occurred if source water was contaminated and suggests that exposure may have been considerable."

Notably the study *Identification of New Agent Orange/Dioxin Contamination Hot Spots in Southern Viet Nam Final Report conducted by Hatfield Consultants* in 2006 noted significant hot spots in the land and waters internal to Vietnam, including Da Nang harbor. Concentration levels were still significant, over thirty years after the end of the war.

The DVA *Federal Register* comment contained the curious remark that one had to assume that the sailors drank only the contaminated water and only for an extended period of time. That is a safe assumption. All Navy ships, manufacture potable drinking water from sea water. This water is replenished almost daily. These ships did not have the capacity to carry potable water throughout the voyage without replenishment via their distillers. These ships patrolled the entire coast of Vietnam and often anchored in harbors to provide gunfire support. To infer that these ships never steamed through contaminated waters is naive. Additionally, there was no means to transport large quantities of water outside of the reserve potable water tanks. Nor was there a long water hose connecting the ship with Hawaii.

As previously discussed the NRCET study was cited in the 2005 Mortality Study. That study was conducted by the Australian Institute of Health and Welfare for the Australian Department of Veterans Affairs. It found a 19% increase in mortality for Navy veterans over the Australian population. This is despite the fact that mortality among Vietnam veterans as a whole was lower than the general Australian community. In another study, the *Cancer Incidence in Vietnam Veterans 2005* (hereinafter the 2005 Cancer Study), the Australian Department of Veterans Affairs again cited the NRCET study. The 2005 Cancer Study found that Royal Australian Navy veterans had the highest rate of cancer, higher than expected by 22–26%, followed by Army veterans, higher than expected by 11–13% and Air Force veterans with a 6–8% higher than the expected rate of cancer. Navy and Army veterans showed a higher than the expected incidence of cancers of the colon, oral cavity, colon, pharynx and larynx and cancers of the head and neck and gastrointestinal. Whereas

Navy veterans demonstrated a higher than the expected incidence of gastrointestinal cancer, Army and Air Force veterans showed higher than the expected incidence of Hodgkin's disease and prostate cancer. The cancers unique to the Navy would appear to support the ingestion of the dioxin orally rather than nasally.

Notably, cancer in Navy veterans could not be attributed to the ship on which they served or the time spent in Vietnamese waters. This would indicate, I believe, that the contamination of the waters was extensive and the contamination of the water storage and distribution system long lasting. Although the passage of time as made it impossible to produce direct proof, the circumstantial evidence is certainly compelling,

The Australians have stepped forward and began granting benefits to those who had served (i) on land in Vietnam, (ii) at sea in Vietnamese waters, or (iii) on board a vessel and consuming potable water supplied on that vessel, when the water supply had been produced by evaporative distillation of estuarine Vietnamese waters, for a cumulative period of at least thirty days. They have defined Vietnamese waters as an area within 185.2 kilometers from land (roughly 100 nautical miles). In reliance upon the NRCET Study, they began promulgating Statements of Principles, which are similar to our Code of Federal Regulations, covering various cancers. For several years now, Australian Navy veterans have been receiving benefits denied to their American counterparts.

In my testimony before the Institute of Medicine's (IOM) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update) in San Antonio Texas in 2008, I discussed the various evidence and urban legends concerning the exposure of navy veterans. We provided them with copies of the NRCET study, the VA's *Federal Register* notice and reclamas by myself and Dr. Gaus. The IOM Committee conducted an exhaustive review of the NRCET study and requested an independent review by Dr. Steve Hawthorne who is the Senior Research Manager of the Energy & Environmental Research Center (EERC), University of North Dakota. Dr. Hawthorne's principal areas of interest and expertise include environmental chemistry and analysis, and supercritical and subcritical (superheated) fluid extraction. After reviewing the NRCET study, Dr. Hawthorne reported:

> * * * that leaves two questions to be answered:
>
> 1. Is there a physiochemical basis to expect that non-polars (like the dioxins) would distill, while polars (like dimethylarsenic acid) do not distill?
> 2. Do their experiments confirm expectations based on physiochemical parameters that dioxins distill and DMA does not?
>
> The answers to both questions are definitely yes. An explanation of these results can be based on Henry's law—i.e., the tendency of a solute to evaporate from water. This tendency is enhanced by high vapor pressure (obviously), but also by low water solubility. Thus, even molecules like 2,3,7,8-TCDD that have high boiling points will evaporate from water because their solubility is so low. Conversely, molecules like DMA that are very soluble in water do not evaporate from water. The fact that non-polar molecules (even those with high boiling points) evaporate from water is well-known in environmental science, and has been demonstrated to occur with a broad range of pollutants such as PCBs, PAHs, organochlorine pesticides, as well as dioxins. For example, the EPA estimates that the half-life for evaporation of 2,3,7,8-TCDD from a pond is 46 days. The distillation process greatly enhances this process by adding heat and reducing the pressure. The experiments described confirm expectations based on Henry's law that dioxins would be concentrated in the distillate, while DMA would not. (The formation experiment was inconclusive, but I don't believe it is important to their conclusions.) Assuming that their apparatus mimics ship-board units (and that seems reasonable), the increased concentration of dioxins in distillate water should be accepted to a reasonable scientific certainty.

The IOM report accepted the proposition that Navy veterans off the coast were exposed and recommended that they be given the presumption of exposure. In their recommendation, the IOM committee stated: "Given the available evidence, the Committee recommends that members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure."

Although the DVA accepted other recommendations from this IOM report, including the extension of benefits for ischemic heart disease, Parkinsons disease and B cell leukemia such as hairy cell leukemia. Inexplicably The Department of Veterans Affairs refused to accept the IOM report, instead ordering the current ongoing study which will be reviewing areas previously addressed by the Agent Orange Committee and the Australians. The study was commissioned in February of this year and is

expected to take 18 months. Meanwhile, our Navy veterans are dying of Agent Orange related diseases.

The Department of Veterans Affairs has undertaken a project to cover some blue water Navy veterans. If a ship entered inland waters, such as a river, the presumption is granted. This is a classic case of doing the right thing for the wrong reason. It is doubtful that the distillers, designed to convert salt water to fresh would have been operating in the rivers. More importantly, Navy regulations at the time stated potable water should not distilled in rivers, streams etc. This project, while covering a few more veterans, is a mere extension of the DVA's irrational "boots on the ground" requirement.

This project is complicated by the difficulty in proving ships locations. Logs are not always available and are handwritten. Specific locations are not always identifiable. Locations are often specified by directional bearings and/or ranges to navigational points that may no longer exist or may be called by a different name. Personnel going ashore are never documented unless they are permanently reporting to or transferring from the command. The project has resulted in a massive expenditure of time with little reward.

I would be remiss if I did not address the case of *Haas* v. *Peake*, 525 F.3d 1168 (Fed. Cir. 2008). I filed an amicus brief in *Haas* which centered on international law and the NRCET study. The presumption issue in *Haas* was a secondary issue. Actually Commander Haas was directly exposed from an airborne cloud.

The *Haas* case was primarily decided on administrative law principles dealing with rulemaking. In revising their M21–1 Manual, the DVA failed to follow the rulemaking provisions of the Administrative Procedures Act (APA). The Court of Appeals for Veterans Claims found that the provision was irrational and not promulgated pursuant to law. The Court of Appeals for Veterans Claims had also ruled that the Department of Veterans Affairs's interpretation of the enabling statute, 38 U.S.C. §1116, which excluded the Navy veterans, was unreasonable and inconsistent.

The Federal Circuit excused the VA's compliance with the rulemaking provisions of the APA. Acting on administrative law principles, it also reversed the Veterans Court holding that the DVA was not given sufficient deference in the way they interpreted the statute. The Federal Circuit relied upon the "*Chevron* doctrine," that states "when an agency invokes its authority to issue regulations, which then interpret ambiguous statutory terms, the courts defer to its reasonable interpretations." In a split (2–1) decision, the Federal Circuit held that the DVA was entitled to *Chevron* deference because they found that the phrase "served in the Republic of Vietnam in section 1116 is ambiguous."

In my amicus brief I raised the argument that the statutory language incorporated the territorial seas. U.S. Navy ships, like their Australian counterparts, steamed within the territorial waters of Vietnam. Territorial waters were historically defined as (1) the water area comprising both inland waters (rivers, lakes and true bays, etc.) and (2) the waters extending seaward three nautical miles from the coast line, i.e., the line of ordinary low water, (oft times called the 'territorial sea'). Seaward of that three-mile territorial sea lie the high seas. *C.A.B.* v. *Island Airlines, Inc.* 235 F. Supp. 990, 1007 (D.C. Hawaii 1964). Most countries now claim a twelve mile limit starting at a straight baseline which encompasses the "fringe" of coastal islands. A wider area, the contiguous zone, reaches out twelve miles from the outer limit of the territorial sea. *United States* v. *Louisiana*, 394 U.S. 11, 23 n. 26. (1969). Vietnam claimed a 12 mile territorial sea limit, which defines its sovereignty. That is consistent with the limitations of the United Nations Convention on the law of the Sea Article 3 and the 1958 Treaty on the Territorial Sea and Contiguous Zone. Three nautical miles is within the outermost range of the 5″38 gun mounts of Destroyer type ships used in the Vietnam War. Twelve nautical miles (24,000 yards) is beyond the maximum range of the most commonly used shipboard batteries, the 5″38 or the 5″54 naval gun. The same holds true for the 6″ and 8″ guns. Only the Battleship could provide support beyond 12 miles.

The enabling statute, 38 U.S.C. §1116(a)(1)(A) recognizes a presumption of service connection when the veteran manifests an enumerated disease, if the person was "a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975." The threshold factors are the existence of a prescribed disease and service in Vietnam.

In *Louisiana* v. *Mississippi*, 202 U.S. 1, 52 (1906), the Supreme Court held that the Mississippi Sound, and by extension the waters surrounding all harbors as inland waters, were under the category of "bays wholly within [the Nation's] territory not exceeding two marine leagues in width at the mouth." Inland, or internal waters are subject to the complete sovereignty of the Nation, as much as if they were a

part of its land territory. *United States* v. *Louisiana, supra*. Thus the presumption should apply to any harbor as well as waters landward of the baseline. The territorial waters to include the contiguous zone are also under the control of the sovereign Nation, although innocent passage may not be denied. *Id.* Subject to the right of innocent passage, the coastal state, in this case Vietnam, has the same sovereignty over its territorial sea as it has with respect to its land territory. *See*, 1958 Territorial Sea Convention Article 1–2; Law of the Seas Convention, Article 2. Notably, the VA has refused to recognize domestic and international law definitions of "inland" waters in determining whether or benefits should be granted.

Thus any time a Navy ship was firing its guns ashore, it would have had to have been within the inland or territorial waters of Vietnam. When at anchor in a harbor, it was within the inland waters of Vietnam. At all relevant times, the ship was within the sovereignty of Vietnam and therefore its crew "served in the Republic of Vietnam." The distance to shore directly corresponds to the maximum range of the support of forces ashore. Consequently, most naval units operated close to shore. Gunfire missions were often shot from two to three thousand yards of the shore, well within the straight baseline which marks the boundary between inland and territorial waters. Many were anchored in Da Nang Harbor. The closer a ship was to the coast, the higher the possibility that they steamed through waters contaminated with Agent Orange. In the case of the harbor anchorages, the ships were not only within the sovereign territory of Vietnam, they were within the inland waters. Under both national and international law, most ships served in the Republic of Vietnam. The Federal Circuit, in ruling on a petition for rehearing, refused to address the international law arguments stating that Mr. Haas had waived the argument by not presenting it at the Veterans Court.

After the submission of all briefs and a few days before the May 8, 2008 decision was rendered, the Department of Justice, acting on behalf of the DVA submitted a supplemental brief based on the erroneous April 15, 2008, *Federal Register* notice. Although the information in that article has since been refuted, there was not sufficient time to respond to the supplemental brief. This left the Court under the impression that the NRCET study had not been peer reviewed, that the Australians used different ships and distilling systems, that American ships did not make water and that the authors doubted their own study. Those impressions were blatantly false, but this was not brought before the Court. Although not a holding of the Court, the DVA misrepresentations were discussed in *dicta* and obviously had some impact on the decision.

While this adversarial ploy was a brilliant tactical move, it was a reprehensible act by an agency who claims to stand as a non adversary to care for the veteran, his widow and orphan. I am reminded of Justice Black's dissent in *St. Regis Paper Co.* v. *United States*, 368 U.S. 208, 229 (1961) "Our Government should not by picayunish haggling over the scope of its promise, permit one of its arms to do that which, by any fair construction, the Government has given its word that no arm will do. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government."

These men left their homes to go to war. It was an unpopular war, but they went. There were teach-ins telling them how to dodge the draft or flee to Canada. But they went. When they returned they were spat upon and called the most terrible of names. But they went. These men were and are casualties of war. Many have died and others are dying. Their names will never go on the Wall, but they are casualties who have had or will have their lives cut short. In the midst of recession they are left without medical care. Their families are left without support as they pass. These men are heroes and we owe them medical care and a pension.

Currently Australia recognizes a presumption of exposure for all of those who served within the 185.2 kilometer radius of Vietnam for thirty days or more. That is roughly the same area as the Vietnam Service Medal area. While I am certainly happy that our Allies have taken the step of compensating and treating their Navy veterans, as an American, I am somewhat chagrined that we did not immediately follow suit. As the leader of the Free World we should take the lead in taking care of our veterans.

As I mentioned earlier, It is impossible to provide direct evidence as to the dioxin content of the South China Sea and the waters off Vietnam in the 1960′s and 1970′s. Too much time has passed to be able to make that determination. The circumstantial case, however, is compelling. The 2005 Mortality Study and Cancer Incidence Study identifies an exposure problem unique to the Navy. The NRCET study shows how exposure most probably occurred. The type of cancers developed by Australian Navy veterans confirm that exposure did occur.

S. 1939 is designed to correct years of neglect and degradation. It will restore earned benefits to these heroes and ensure that their families will receive a pension upon their premature death. It will also implement the recommendations of the IOM's Agent Orange committee. This is not a gift. It is not welfare. It is an earned benefit bought and paid for with their health and their lives. I urge this Committee to favorably report S. 1939 with a strong recommendation that it be sent to the full Senate for expedited passage.

Again, thank you for the opportunity to speak with you today. It is a great personal honor both to appear before you and to represent the Navy heroes of the Vietnam War. God bless our veterans and God bless the United States of America.

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PREPARED STATEMENT OF JOHN L. WILSON, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee: Thank you for inviting the Disabled American Veterans (DAV) to provide our views for the record at this important hearing on legislation pending before the Committee on Veterans' Affairs on the eighteen numbered bills and one draft measure under consideration by the Committee today. We appreciate the Committee's leadership in enhancing the Department of Veterans Affairs (VA) benefits programs on which many service-connected disabled veterans must rely, and we also appreciate the opportunity to offer our views.

S. 1780—HONOR AMERICA'S GUARD-RESERVE RETIREES ACT

The purpose of this bill would deem the service of a person retired from the National Guard and Reserve as active duty service, when the person qualifies for retired pay for his or her Reserve (non-regular) service or, but for age, would be so entitled. This distinction would be for the purposes of extending eligibility for benefits provided through the VA.

The DAV has no resolution on this matter and it is not within the scope of our mission.

S. 1866—A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE ELIGIBILITY OF PARENTS OF CERTAIN DECEASED VETERANS FOR INTERMENT IN NATIONAL CEMETERIES

This bill would broaden eligibility for internments in National Cemeteries. In the event a parent of a deceased veteran who, at the time of the parent's death, did not have a spouse, surviving spouse, or child who had been interred, or who, if deceased, would have been eligible to be interred in a National Cemetery, this measure would authorize such burial in a National Cemetery.

While the DAV has no adopted resolution from our membership pertaining to this specific matter, we would not oppose passage of this legislation.

S. 1939—AGENT ORANGE EQUITY ACT OF 2009

The goal of this bill would redefine as geographic parts of the Republic of Vietnam such Republic's inland waterways, ports, and harbors, waters offshore, and airspace above, for purposes of the presumption of service connection for diseases associated with exposure by veterans to certain herbicide agents while in or near Vietnam. This bill would also include as veterans eligible for such presumption those who served on Johnston Island during the period beginning on April 1, 1972, and ending on September 30, 1977, or those who were awarded the Vietnam Service Medal or the Vietnam Campaign Medal.

In accordance with DAV Resolution 017, our membership has long supported legislation to clarify that military service in the former Republic of South Vietnam for purposes of benefits based on exposure to herbicides should include service in the waters offshore. Military personnel who served on ships no more distant from the spraying of these herbicides than many who served on the Vietnam land mass itself have arbitrarily and unjustly been denied benefits of the presumption of their exposure, and consequently the presumption of service connection for herbicide-related disabilities. Therefore, DAV supports this legislation and encourages its enactment.

S. 1940—A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO CARRY OUT A STUDY ON THE EFFECTS ON CHILDREN OF EXPOSURE OF THEIR PARENTS TO HERBICIDES USED IN SUPPORT OF THE UNITED STATES AND ALLIED MILITARY OPERATIONS IN THE REPUBLIC OF VIETNAM DURING THE VIETNAM ERA

This measure would direct the Secretary of Veterans Affairs to complete, and report to the Committees on Veterans Affairs, the results of a study of the effects on children of their parents' exposure to herbicides used in support of U.S. and allied military operations in the former Republic of South Vietnam during the Vietnam era.

In delivering the charge to the Institute of Medicine (IOM) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update), the VA made a request related to the purposes of this bill. The request asked the IOM committee to comment on whether effects of herbicide exposure might be manifested in veterans' children at later stages of their development than have been systematically evaluated to date or in later generations and on the feasibility of assessing such effects. In its 2008 Veterans and Agent Orange Update report, the IOM Committee reported:

> Developing understanding of epigenetic mechanisms leads this Committee to conclude that it is considerably more plausible than previously believed that exposure to the herbicides sprayed in Vietnam might have caused paternally-mediated trans-generational effects. Such potential would most likely be attributable to the TCDD contaminant in Agent Orange. Consequently, this Committee recommends that laboratory research be conducted to address and characterize TCDD's potential for inducing epigenetic modifications. As the offspring of Vietnam veterans grow older, the possibility of a parental effect on the incidence of adult cancers, cognitive problems, and other diseases of maturity are of increasing interest. While information concerning the applicability of epigenetic mechanism to TCDD is being gathered, the Committee further recommends innovative epidemiologic protocols be developed to address the logistically challenging task of determining whether adverse effects are being manifested in the adult children and grandchildren of Vietnam veterans.

Further, enactment of this bill would be consistent with both the VA Secretary's decision in September 2009 as well as the House Committee on Veterans' Affairs recent oversight hearing to examine the feasibility and circumstances of recommencing the 1980's-era National Vietnam Veterans Longitudinal Study (NVVLS).

DAV National Resolution No. 252 urges congressional oversight and Federal vigilance to provide for research, health care and improved surveillance of disabling conditions resulting from military toxic and environmental hazard exposures. Research conducted by the National Institutes of Health, the Department of Defense (DOD), VA and other Federal departments and agencies, has focused on associations linking toxic and environmental exposures with subsequent health status of veterans, and in the case of Vietnam veterans, some of their children. We urge Congress to actively oversee its established mechanism of delegation to the National Academy of Sciences and VA to determine validations of, and develop equitable compensation policy to support, environmentally exposed veterans and those whose children are affected.

S. 2751—A BILL TO DESIGNATE THE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER IN BIG SPRING, TEXAS, AS THE GEORGE H. O'BRIEN, JR., DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

This measure would designate the Department of Veterans Affairs medical center in Big Spring, Texas, as the "George H. O'Brien, Jr., Department of Veterans Affairs Medical Center." DAV adopts no resolutions on matters such as these. This is a local issue and would be handled by a local Chapter or Department of the DAV; therefore, DAV has no position on this matter.

S. 3035—THE VETERANS TRAUMATIC BRAIN INJURY CARE IMPROVEMENT ACT OF 2010

If enacted, this bill would require the Secretary of Veterans Affairs to provide a report to Congress on the feasibility and advisability of VA's establishment of a Polytrauma Rehabilitation Center or Polytrauma Network Site of the VA in the geographical area of the northern Rockies and Dakotas. The bill would require the report within 180 days of enactment. The bill describes required elements that would be addressed in the report, including adequacy of existing facilities available to polytraumatically-injured veterans within this frontier region; a comparative assessment

of rehabilitation programs' effectiveness in urban versus rural and frontier regions; assessment of the cost of living and financial stresses of frontier life; and, an assessment of therapies to prevent or remediate neurologic conditions secondary to Traumatic Brain Injuries and whether such therapies can be interrupted by the stresses of urban life.

As indicated in the findings section of the bill, VA has established polytrauma rehabilitation centers in four locations [and has announced a fifth location in San Antonio, Texas] and has designated other polytrauma network sites in each Veterans Integrated Service Network. Injured veterans in this particular six-state area might need to travel to Minneapolis, Minnesota or Palo Alto, California to receive specialized care for their polytrauma needs. Alternatively, they would need to travel significant distances to other urban areas such as Seattle or Denver to receive private care at VA or DOD expense. Several studies have shown that nearly half of our Armed Forces serving in Iraq and Afghanistan emanate from rural areas; thus, these wars are producing numbers of polytraumatically injured veterans from rural, remote and frontier regions.

Consistent with DAV Resolution No. 241, adopted at our most recent National Convention in Denver, Colorado, focused on gaining proper care for veterans with Traumatic Brain Injury (often accompanied by polytrauma), we support the purposes of this bill and appreciate the intentions of its sponsors. Nevertheless, we would anticipate that should VA open such a specialized center in a frontier location such as Ft. Harrison, Montana or Cheyenne, Wyoming based on findings in the report required by the bill, VA's recruiting and retaining the types and variety of highly specialized providers might become a significant barrier to the maintenance of quality of care in such a technologically-advanced activity. The existing polytrauma centers all maintain vigorous affiliations with university schools of medicine, of other health professions and of the health sciences in general. They conduct significant biomedical and prosthetic research focused on polytrauma and its sequelae. There is no school of medicine in Montana, Wyoming, Idaho or eastern Washington. Also we would be concerned about the efficiency of such a center because of the generally low absolute numbers of polytrauma cases who may continue to reside in that frontier region. We would ask the Committee to consider amending the required elements of the report to add a census of the existing polytrauma veteran population continuing to reside in this five-state area, with an assessment of their service needs and their current providers.

Our decades of experience with VA's spinal cord injury (SCI) centers would demonstrate that tens of thousands of SCI veterans in fact relocated their residences either temporarily or permanently in many cases in order to be nearer that vital VA service for them. VA maintains 23 SCI centers, all located in urban and academic environments.

We have been made aware that many families of polytraumatically injured veterans of Iraq and Afghanistan service, many from rural areas, also are relocating to be nearer to VA's existing polytrauma sites of care and the specialized medical and surgical resources attendant to these centers. These are tragic but perhaps unavoidable consequences of severe disability caused by war.

S. 3107—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2010

If enacted, this measure would direct the Secretary of VA to increase the rates of veterans' disability compensation, additional compensation for dependents, the clothing allowance for certain disabled veterans, and dependency and indemnity compensation for surviving spouses and children as of December 1, 2010. These increases would be required to be at the same percentage increase as benefits provided under title II (Old Age, Survivors and Disability Insurance) of the Social Security Act, on the same effective date.

This Nation's first duty to veterans is to provide for the rehabilitation of its wartime disabled. In accordance with DAV's Resolution No. 072, we support enactment of legislation that provides a realistic increase in VA disability compensation rates to bring the standard of living of disabled veterans in line with that which they would have enjoyed had they not suffered their service-connected disabilities.

While Congress passed similar legislation last year, veterans received no increase as a result of the general downturn in the economy. Despite this downturn, many items did increase in cost. Veterans generally find themselves in more vulnerable economic status than their peers who did not serve in the military and feel the loss of such annual increases more keenly than many others. We therefore urge Congress to ensure veterans are provided increased compensation to meet their daily needs.

S. 3192—FAIR ACCESS TO VETERANS BENEFITS ACT OF 2010

The stated goal of this bill is to extend the 120-day limit for the filing of an appeal to the Court of Appeals for Veterans Claims (Court) after a final decision of the Board of Veterans' Appeals (BVA), upon a showing of good cause for such time as justice may require. Such an extension would be applicable to appeals of final Board decisions issued on or after July 24, 2008.

The DAV supports legislation to allow for equitable tolling of the appeal period for claims before the VA and Court decisions. We note in DAV Resolution No. 226 that Congress created a benevolent system for the administration of veterans' benefits and services that is both ex parte and nonadversarial before the VA. Additionally, the law previously provided for equitable tolling of the appeal if a veteran was physically or mentally incapacitated and unable to file the appeal within the allotted time period, although this provision was seldom found in the veteran's favor. In many circumstances, the laws also provided for equitable tolling of an appeal should a veteran incorrectly send a request to appeal to the VA Regional Office (VARO) or to the BVA instead of the Court. DAV supports this legislation and encourages its enactment.

S. 3234—VETERAN EMPLOYMENT ASSISTANCE ACT OF 2010

This multifaceted legislation would seek to help our veterans receive training in order to become gainfully and equitably employed.

Section 3 would amend the Small Business Act to direct the Administrator of the Small Business Administration (SBA) to establish a program, headed by a Director, which designates veterans' business centers to provide entrepreneurial training and counseling to veterans in areas in which the number of veterans, especially veterans of Operations Enduring Freedom and Iraqi Freedom (OEF/OIF), exceed the national median. In addition, it requires the Director to establish a program of grants to veterans' business centers to provide Federal procurement assistance to small businesses owned and controlled by veterans, and develop outreach programs to create or further develop service-disabled veteran-owned small businesses. It also authorizes the Director to hold biennial veterans entrepreneurial development summits.

DAV has no resolution on this matter but would not be opposed to its favorable consideration. However, we submit that such programs must focus equally on veterans of all eras, with no emphasis on a veteran from one conflict over that of another since all were in harm's way and all are deserving of equal consideration and support.

Section 5 would reduce from three years to one year the period for completion of training of new Disabled Veterans' Outreach Program (DVOP) specialists and Local Veterans' Employment Representatives (LVERs).

While a shortened training program may mean more specialists being fielded sooner to provide such critical services to this important population, we must express our concern. A shortened training program may have the unintended consequence of specialists not having achieved full proficiency in their area of expertise and thus providing less than satisfactory employment counseling and placement services to veterans. In accordance with DAV Resolution No. 048, we would recommend Congress provide adequate funding and permanency of staff, and training including for the National Veterans Training Institute, Small Business Administration, DVOPs, LVERs, and Homeless Programs.

Section 6 would direct the Secretary of Labor to provide a training subsistence allowance for each month that an unemployed veteran is enrolled in a full-time employment and training program that is offered by an eligible training provider and teaches a skill connected to a career in an in-demand industry.

Although DAV does not have a resolution on this matter we would not be opposed to its favorable consideration.

Section 7 provides for the use of veterans' post-9/11 educational assistance for the pursuit of apprenticeships and on-job training.

The DAV, in accordance with DAV Resolution No. 002, supports limited dual entitlement to vocational rehabilitation and employment under Chapter 31, and the Post-9/11 Education Assistance Program under Chapter 33 (GI Bill) in order to ensure that disabled veterans are not forced to choose the lesser of two available benefits. Programs such as these were set in place to provide veterans some recompense for their service and sacrifice, particularly those who were disabled as a result of their service. The current disparity between the more financially lucrative subsistence allowances of the new GI Bill will ultimately force service-connected disabled veterans with employment deficits to either utilize the Chapter 31 program (which is not as financially helpful as Chapter 33) in order to obtain the often critical vocational rehabilitation services available only under Chapter 31, or opt out of this pro-

gram in order to provide subsistence for their families. We hold that veterans should not be placed in such an untenable position. Our Nation's first duty to veterans is the rehabilitation and welfare of its service-connected disabled. Precedent has already been set in that the Montgomery GI Bill currently allows veterans to use both its benefits and those of Chapter 31 on a limited basis. Therefore, DAV supports this legislation and recommends its enactment.

Additionally, pursuant to DAV Resolution No. 047, we recommend that Congress make the Chapter 33 Post-9/11 GI Bill available to pay for all necessary civilian license and certification examination requirements, including necessary preparatory courses. In accordance with this resolution, we note that the DOD provides some of the best vocational training in the Nation for its military personnel. It has established measures and performance standards for every occupation within the Armed Forces. These occupational standards meet or exceed the civilian license or certification criteria but many former military personnel, certified as proficient in their military occupational career, are not licensed or certified to perform a comparable job in the civilian workforce. A January 14, 1999 study by the Congressional Commission on Servicemembers' and Veterans' Transition Assistance identified several military professions in which civilian credentialing is required for employment in the private sector. We therefore recommend that this legislation be modified to also make the Chapter 33 Post-9/11 GI Bill available to pay for all necessary civilian license and certification examination requirements, including necessary preparatory courses as a means to increase the civilian labor market's acceptance of the occupational training provided by the military and improve the post-service employment opportunities for veterans.

Section 8 would require the Secretary of Veterans Affairs to establish: (1) a program to award grants to states to establish a veterans' conservation corps to give veterans volunteer and employment opportunities under state conservation projects; and, (2) a center of excellence of methods for educational institutions to afford academic credit to veterans for previous military experience and training.

Section 9 would amend the Workforce Investment Act of 1998 to direct the Secretary of Labor to establish: (1) information technology military pathways demonstration programs to enable veterans to build upon technical skills learned in the military when entering into the civilian information technology workforce; and (2) nursing, public health and allied health professional, and physician assistant military pathways demonstration programs to enable veterans to build upon military technical skills when entering into civilian positions in those fields.

Section 12 would require the Secretary of Labor to carry out a veterans' energy-related employment program to encourage the employment of veterans in the energy industry.

Section 14 would direct the Secretary of Defense to carry out the Veterans to Work pilot program to provide veterans with employment in military construction projects.

Although DAV does not have resolutions from our membership on the specific matters entertained in sections 8, 9, 12, and 14, we would not be opposed to their favorable consideration.

Section 15 requires: (1) a report on improvements and enhancements of the Transition Assistance Program (TAP) to better meet the needs of members of the Armed Forces and veterans; and (2) a study on a program of transition assistance modeled on the Employment Enhancement Program of the Washington National Guard.

DAV has long held that DOD's TAP and Disabled Transition Assistance Program (DTAP) programs are not adequate in scope or resources to ensure a seamless transition from active duty to veteran status. The transition from military service to civilian life is very difficult for most veterans who must overcome many obstacles to successful employment. TAP and DTAP were created with the goal of furnishing separating servicemembers with vocational guidance to aid them in obtaining meaningful civilian careers. We therefore support efforts to improve such programs. We also ask Congress, in accordance with DAV Resolution 258, to ensure the level of funding and staffing is adequate to support the routine discharges per year from all branches of the Armed Forces, which has not been the case for some time. Additionally, in accordance with DAV Resolution 134, we recommend Public Law 101–510, codified in sections 1141–1150 of title 10, United States Code, which authorized TAP and DTAP, be amended to require every National Guard and Reserve member who is activated for 12 months or longer be afforded a period of active duty of five days, within 90 days of separation, in order to attend TAP and DTAP workshops.

S. 3286—A BILL TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO CARRY OUT A PILOT PROGRAM ON THE AWARD OF GRANTS TO STATE AND LOCAL GOVERNMENT AGENCIES AND NONPROFIT ORGANIZATIONS TO PROVIDE ASSISTANCE TO VETERANS WITH THEIR SUBMITTAL OF CLAIMS TO THE VETERANS BENEFITS ADMINISTRATION

If enacted, this bill would require the Secretary of Veterans Affairs to establish a pilot grant program (modeled to the degree practicable on Subchapter II of Chapter 20, title 38, United States Code, authorizing grants for comprehensive service centers to aid homeless veterans) to assist veterans in filing claims for VA benefits with the Veterans Benefits Administration. Eligible grantee organizations under this bill would be limited to State and local governmental agencies and nonprofit organizations as determined appropriate by the Secretary. The bill expresses several criteria to govern the program, and would limit the program to two years' duration.

While DAV has no resolution on the matter, we do have concerns about how such a program would work and whether providing funding for such a program would be the best use of VA's limited resources. The legislation does not specify either the size or cost of the pilot program. Since there are already thousands of service officers working for States, local governmental agencies and veterans service organizations providing veterans with precisely the assistance contemplated under this legislation, it is not clear what new or additional purpose the pilot would serve.

S. 3314—TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS AND THE APPALACHIAN REGIONAL COMMISSION TO CARRY OUT A PROGRAM OF OUTREACH FOR VETERANS WHO RESIDE IN APPALACHIA

This bill would require the Secretary of Veterans Affairs and the Appalachian Regional Commission to carry out a program of outreach to veterans who reside in the Appalachian region. The expressed intention of the bill would be to increase access and awareness of the eligibility of veterans for Federal, state and local government programs that provide compensation and other benefits for service in their military service who reside in the Appalachian region.

While we have no resolution from our membership supporting the specific purposes of this bill, we note that VA has an outreach program in place as part of its overall mission. We are therefore concerned that contracting out such services may not only dilute the expertise VA has developed in its delivery of services and benefits to veterans and may instead divert critical funds that can best be utilized in-house to more costly contracted entities for delivery of the same services.

S. 3325—TO AMEND TITLE 38, UNITED STATES CODE, TO AUTHORIZE THE WAIVER OF THE COLLECTION OF COPAYMENTS FOR TELEHEALTH AND TELEMEDICINE VISITS OF VETERANS

This measure would amend section 1722A of title 38, United States Code, to prohibit the VA from collecting a copayment for any service provided by VA under its telephone care program, also called VA Telehealth or telemedicine visit of a veteran under the laws administered by VA.

This Committee is well aware that the Veterans Health Administration (VHA) has invested heavily in telehealth under the broader notion of care coordination. Telehealth, or telemedicine, is the use of telecommunications and information technology to provide health care when distance separates participants. For decades, telemedicine has been considered a means of overcoming barriers to providing rural health care. In addition, the American Telehealth Association indicated in a March 2007 position statement that there is a growing consensus that the supply of health care providers across the professions is going to be inadequate to meet the expanding needs for health care of the U.S. population—both in the short term and in the long term. Telehealth, while not the entire solution to the problems presented by the shortage and maldistribution of health care providers, can make important contributions to alleviating those problems.

A study published in the Journal of Rehabilitation Research & Development suggests that using information and communication technology to deliver health services, expertise, and information over a vast geographical distance and implementing home telehealth modalities may enhance users' timely accessibility to needed care, reduce preventable hospitalization use, and decrease direct and indirect medical costs over time.[1] In addition, a number of studies have shown that home telehealth interventions can improve clinical outcomes for conditions common among SCI pa-

[1] Jia H, Chuang HC, Wu SS, Wang X, Chumbler NR. Long-term effect of home telehealth services on preventable hospitalization use. Journal of rehabilitation research and development. 2009 Jan 1; 46(5):557–66.

tients, such as pressure ulcers (Phillips et al. 2001) and diabetes (Joseph 2006; Barnett et al. 2007).

DAV supports this measure according to our Resolution No. 234, calling for legislation to repeal all copayments for military retirees' and veterans' medical services and prescriptions. However, DAV would like to share some of our concerns regarding telemedicine/telehealth in the VA health care system.

First and foremost, the 21 Veterans Integrated Service Networks (VISNs) currently have no financial incentive to invest in this important technology. The Veterans Equitable Resource Allocation (VERA) system is the method VA uses to distribute resources among its VISNs. It distributes funds to each VISN based both on patient workload, as well as on the complexity of care provided. This system allocated $31.8 billion in general purpose funds during fiscal year (FY) 2009. As this Committee is aware, VERA does not currently factor telemedicine and telehealth visits into its workload data.

In addition, according to Dr. Anthony A. Cavallerano, and Dr. Paul R. Conlin, VA physicians writing in the Journal of Diabetes Science and Technology in January 2008, diabetic retinopathy, a condition of the eye resulting from diabetes, is the most common cause of visual loss in the United States. These physicians further noted that only 60 percent of persons with diabetes receive timely and appropriate eye examinations. In FY 2000, Congress recognized the importance of making eye care accessible to all veterans when, in Senate Report 106–410 to accompany the 2001 Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2001 (Public Law 106–271), the Appropriations Committee recommended that VA collaborate with the DOD and the Joslin Diabetes Center to implement the Joslin Vision Network. This collaboration created a system allowing specialists at a remote location to detect diabetic retinopathy and other eye conditions by reviewing images transmitted across a telecommunications network. In 2001, VA convened an expert panel to evaluate teleretinal imaging to screen for diabetic retinopathy. In a statement regarding the implementation of VA's teleretinal program, this panel said, "The VHA envisions developing and deploying a nationwide teleretinal imaging system that will be regionalized by VISN and will build on the VHA's robust information technologies for acquiring, transmitting, interpreting, and storing digital retinal images. A similar system for screening for [diabetic retinopathy] has been established in the United Kingdom." While the program has expanded to assist in providing eye care to almost 20 percent of VA's diabetic veteran population, VA only offers teleretinal imaging at some facilities. In FY 2008, VA had these services available at only 130 of its nearly 800 community-based outpatient clinics (CBOCs).

In FY 2008, VA provided ambulatory services to a total of 4,901,797 veterans. But a telehealth technology allowing health care workers to monitor veterans' chronic diseases while the veteran was at home was used on only 36,400 patients. This is less than one percent of all veterans treated on an outpatient basis.

Under another program, VA provided general telehealth services using real time conferencing to an estimated 48,000 veterans, 29,000 of which utilized the services for mental health purposes. Adam Darkins, MD, Chief Consultant, Office of Care Coordination, in the Office of Patient Care Services, noted that outcomes data for tele-mental health have demonstrated a 24.6 percent reduction in hospital admissions and a 24.4 percent reduction in bed days of care when these services are utilized. However, according to the National Rural Health Association, it has been estimated that about 20–23 percent of the U.S. population live in rural areas, but only 9 to 11 percent of physicians practice in rural areas. Among 1,253 communities designated as Mental Health Professional Shortage Areas in 2007, for example, almost 75 percent did not have a psychiatrist. For this reason, VA psychiatrists, writing in the Journal of Academic Psychiatry in November 2007, recommended ensuring competency in telemedicine technologies as part of a curriculum designed to emphasize rural practice in psychiatry residency training.

Mr. Chairman, the ability of VA medical centers and CBOCs to offer specialty services is particularly important to the needs of returning OEF/OIF veterans, many of whom return to remote areas with conditions like PTSD or TBI. We offer our observations to ensure progress of telemedicine in the VA into a robust health care innovation. For decades, telemedicine has been considered a means of overcoming barriers to providing rural health care. According to Dr. Michael Hatzakis et al., a VA physician writing in the Journal of Rehabilitation Research and Development in May/June 2003, experimental programs in telehealth were funded through existing grants on Indian reservations, in psychiatric hospitals, in the prison systems, and in medical schools between the 1950s and the 1970s. Dr. Hatzakis also noted that none have survived, reflecting in part a failure to secure financial self-sufficiency.

In conclusion, while we have no resolution adopted by our membership dealing with the specific matter of telemedicine and telehealth, we believe progress in these technologies is an important component of VA health care, especially for rural veterans and new veterans from OEF/OIF. Also, as indicated, our membership is firmly opposed to copayments in any form as a condition of access to VA health care. Therefore, we would not object to enactment of this bill but ask that the Committee use its oversight to examine the lack of financial incentives in the current allocation policy that may serve as a barrier to more effective uses of telehealth in VA health care.

S. 3330—VETERANS HEALTH AND RADIATION SAFETY ACT OF 2010

If enacted, this bill would make certain improvements in, and promote safer practices in, the administration of radiation treatments at medical facilities of the VA.

The genesis of this bill appears to be the recent finding by the VA Office of Inspector General (OIG) related to application of prostate brachytherapy in the treatment of prostate cancer patients at the Philadelphia, Pennsylvania VA Medical Center, when the wrong strength of implanted radioactive seeds was discovered.

The OIG made five recommendations as follows, all of which VHA's Under Secretary for Health concurred with:

> (1) VHA's National Director of Radiation Oncology Programs should have sufficient resources, to ensure that VHA provides one high quality standard of care for the prostate brachytherapy population. To achieve this end, VHA should standardize, to a practical extent, the privileging, delivery of care, and quality controls for the procedures required to provide this treatment. (2) VHA should take the steps required to ensure that patients who received low radiation doses in the course of brachytherapy be evaluated to ensure that their cancer treatment plan is appropriate. (3) VHA should review the controls that are in place to ensure that VA contracts for healthcare comply with applicable laws and regulations, and where necessary, make the required changes in organization and/or process to bring this contracting effort into compliance. (4) Senior VA leadership should meet with Senior NRC leadership to determine if there is a way forward that will ensure the goals of both organizations are achieved. (5) VHA should work with the OIG to develop a list of documents that should routinely be provided to the OIG when an outside agency is notified of a (possible) untoward medical event.

Section 2 of this measure would require an annual report on low-volume patient programs—specifically, programs with fewer than 100 participants in a calendar year—from all VA medical facilities that conduct such low volume treatment programs. Section 3 of the bill would require the VA Secretary to ensure that all VA health care employees, including contractor employees, receive appropriate training related to the use of radioactive isotopes, on what constitutes a medical event, and to whom it should be reported should such an event occur. Failure to provide such training would require the Secretary to enforce halting the use of radioactive isotopes at a VA facility until the Secretary deems safety to have been restored.

The final section of the bill—Section 4—would mandate the VA Secretary establish specific requirements such as independent peer review of such services, written evaluations by managers of employees providing such services, and evaluation review prior to extension of any existing contracts with non-government entities to provide such services.

DAV has no specific resolution from our membership with respect to S. 3330; however, we concur with the OIG recommendations that proper training, oversight and following all mandates and established procedures for radiation therapies are essential for VA and non-VA contractor health care personnel to ensure patient safety. We ask the Committee to provide oversight to ensure VA carries out all of the recommendations made by the OIG in this case. Also, DAV would not object to passage of S. 3330 to ensure Congress gains adequate oversight information about smaller, "low volume" VA treatment programs and ensure that proper training of health personnel administering radioactive isotope treatments is mandated along with appropriate training for identifying and reporting a medical event that could be harmful to veterans in VA care.

S. 3348—TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE TREATMENT AS A MOTION FOR RECONSIDERATION OF A DECISION OF THE BOARD OF VETERANS' APPEALS OF A NOTICE OF APPEAL OF SUCH DECISION MISFILED WITH THE DEPARTMENT OF VETERANS AFFAIRS

This bill would amend current law so that if a veteran submits documents to VA that disagree with decisions of the BVA and that are misfiled with the Board within 120 days of such decisions, those submissions shall be treated as motions for reconsideration of such decisions.

The law currently provides for equitable tolling, or good cause delays, for veterans who miss legal deadlines in circumstances when the veteran was unable to meet the deadline due to illness or injury. This legislation seeks to provide similar relief for circumstances in which a veteran expresses his disagreement with a decision of BVA by sending documentation to the VA Regional Office (VARO) or to the BVA within 120 days of the decision instead sending it to the Court. Therefore, consistent with DAV Resolution No. 226, DAV supports this legislation and encourages its enactment.

S. 3352—THE VETERANS PENSIONS PROTECTION ACT OF 2010

This bill would modify subsection 1503(a) of title 38, United States Code, to exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to VA pensions for otherwise eligible veterans, surviving spouses and children of veterans, thereby allowing these individuals to qualify for pension or prevent loss of eligibility for existing pension payments, that might occur if such reimbursements were counted as family income. DAV has no resolution on this matter.

S. 3355—THE VETERANS ONE SOURCE ACT OF 2010

This bill would provide for a Web site providing information on benefits, resources, services, and opportunities for veterans and their families and caregivers. Specifically, it would require the Secretary of Veterans Affairs, in collaboration with the Secretaries of the DOD, Labor, Education as well as the Commissioners of Internal Revenue and Social Security, the Administrator of the Small Business Administration and other Federal agencies as determined appropriate, to a single source Web site detailing the full range of benefits from the aforementioned.

While DAV does not have a resolution on this matter, we do support efforts to simplify access to information about benefits and services for veterans, family members and caregivers. We note that VA already has several ongoing IT projects and Internet outreach efforts, as well as new outreach requirements as part of S. 1963, the Caregivers and Veterans Omnibus Health Services Act of 2010. We would therefore encourage dialog amongst Congress, the VA and other Federal agencies to ensure that new legislation is necessary and supportive of reaching the goals identified in the legislation.

S. 3367—TO AMEND TITLE 38, UNITED STATES CODE, TO INCREASE THE RATE OF PENSION FOR DISABLED VETERANS WHO ARE MARRIED TO ONE ANOTHER AND BOTH OF WHOM REQUIRE REGULAR AID AND ATTENDANCE

If enacted, this bill would increase the annual nonservice-connected VA pension rate for a married couple, each of whom is a veteran in need of regular aid and attendance to $31,305, effective on date of enactment of the bill, an increase of $825.00

Although DAV does not have a resolution from our membership on this specific matter, we would not be opposed to its favorable consideration.

S. 3368—TO AMEND TITLE 38, UNITED STATES CODE, TO AUTHORIZE CERTAIN INDIVIDUALS TO SIGN CLAIMS FILED WITH THE SECRETARY OF VETERANS AFFAIRS ON BEHALF OF CLAIMANTS

This measure would amend Section 5101, title 38, United States Code, by broadening the definition of "claimant" for VA benefits purposes to include provisions to enable a person other than the veteran concerned to sign VA claims forms on behalf of a veteran in certain circumstances or conditions that serve to prevent a veteran from signing necessary forms to execute a claim. Under the bill the person authorized to sign such forms would be court-appointed in the case of mental incompetence of the veteran; in the case of a veteran who is a minor, a family member or other person responsible for the welfare of the veteran; or a designated institutional manager or official in the case of an institutionalized veteran. Although DAV does not have a resolution from our membership, there are circumstances where a veteran

may be incapable of providing a signature but would be assisted with receipt of benefits, and therefore we are not be opposed to its favorable consideration.

S. 3370—TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE PROCESS BY WHICH AN INDIVIDUAL FILES JOINTLY FOR SOCIAL SECURITY AND DEPENDENCY AND INDEMNITY COMPENSATION

This bill would simplify the documentation and application process of a widow or widower of a service-connected veteran in filing joint claims for Disability and Indemnity Compensation (DIC) with the VA and for social security benefits with the Social Security Administration.

Although DAV does not have a resolution from our membership on this specific matter we would not be opposed to its favorable consideration.

DRAFT BILL—TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE THE MULTIFAMILY TRANSITIONAL HOUSING LOAN PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS BY REQUIRING THE SECRETARY OF VETERANS AFFAIRS TO ISSUE LOANS FOR THE CONSTRUCTION OF, REHABILITATION OF, OR ACQUISITION OF LAND FOR MULTIFAMILY TRANSITIONAL HOUSING PROJECTS INSTEAD OF GUARANTEEING LOANS FOR SUCH PURPOSES

If enacted, this draft bill would modify the Multifamily Transitional Housing Loan Program in Subchapter VI of Chapter 20, title 38, United States Code, by authorizing VA to issue loans for the construction, rehabilitation, or acquisition of land for transitional housing projects rather than VA's guaranteeing loans for such purposes. The bill would also fully utilize $48 million that was originally appropriated in 1999 for the Multifamily Transitional Housing Loan Guarantee Program and which remains available for obligation.

The DAV has no resolution on this matter.


May 17, 2010

The Honorable Daniel K. Akaka
Chairman
Senate Committee on Veterans' Affairs
412 Russell Senate Building
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Senate Committee on Veterans' Affairs
412 Russell Senate Building
Washington, DC 20510

Dear Chairman Akaka and Ranking Member Burr:

I write in support of the recently introduced legislation to improve the Department of Veterans Affairs Multifamily Transitional Housing Loan Program to house homeless veterans.

In January 2007, the Catholic Charities Housing Development Corporation opened a pilot housing program for homeless veterans - the St. Leo Residence for Veterans in Chicago, Illinois. In addition to providing 141 fully furnished studio apartments to the veterans, Catholic Charities provides extensive case management and job counseling services. More recently, in July 2009, we opened a Veterans Employment Program which received Department of Labor funding.

We at Catholic Charities view the pilot program as successful because St. Leo Residence has served 221 formerly homeless veterans during three years of operation. This means that more than one-half of the apartments "turned over" and now serves another veteran.

As expected in a pilot program, Catholic Charities' staff experienced challenges in working with veterans to maintain sobriety as well as attain personal independence and financial stability after being homeless for extended periods of time. In addition, some of the veterans lost their employment due to the downturn of the United States economy in 2008.

Catholic Charities remains committed to its mission of helping United States veterans since 1919, after World War I. Catholic Charities has used its resources to bolster St. Leo Residence financially by subsidizing the property management operations and by procuring funds to pay for case management and job counseling services.

However, the St. Leo Residence pilot program is in jeopardy because the sources of private donations are dwindling. Thus, it is my hope that the proposed legislation will enable St. Leo Residence for Veterans to receive financial assistance in the future.

Sincerely,

Rev. Michael M. Boland
Administrator, President & CEO

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MOAA
Military Officers Association of America

**VADM Norbert R. Ryan, Jr. USN (Ret)**
*President*

May 4, 2010

The Honorable Patty Murray
173 Senate Russell Building
United States Senate
Washington, DC 20510

Dear Senator Murray:

On behalf of the 370,000 members of The Military Officers Association of America, I am writing to thank you and express our strongest support for your bill, S. 3234, the *Veteran Employment Assistance Act of 2010.*

S. 3234 provides critically needed support for our newest generation of veterans of Iraq and Afghanistan, many of whom are struggling to find meaningful employment.

Unemployment now exceeds 21% for younger veterans and women veteran unemployment is rising at a faster rate than male veterans.

MOAA has been strongly advocating that the nation must do more to assist veterans make a successful transition to civilian pursuits.

Our veterans have risked their lives to protect our country and our freedom and they deserve quality, well paying jobs when they return home. They have the skills, determination and talent to succeed, but too often they face unique challenges that translate into trouble finding a job or starting a business. The Veterans Employment Assistance Act takes a comprehensive approach to create new opportunities and expand existing support programs for our veterans.

Your bill expands Post-9/11 GI Bill Education benefits to include apprenticeship and job training; enhances the ability to transition technical military skills to the civilian workforce, and improves small business assistance programs for veterans. This bill also promotes new ways to improve veterans' employment assistance efforts by requiring wide-ranging studies to analyze how to make current employment assistance programs work better for veterans.

The Veterans Employment Assistance Act will directly improve employment, training, and placement services for veterans, especially those who have served in Operation Iraqi Freedom and Operation Enduring Freedom.

MOAA strongly endorses S. 3234 and pledges to do all we can to see it enacted this year.

Sincerely, 9 all the best!

Vice Ryan

201 N. Washington Street
Alexandria, VA 22314-2539
800.234.6622 phone
www.moaa.org

**NATIONAL COALITION *for* HOMELESS VETERANS**
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Toll-Free: Voice 800/VET-HELP ◆ FAX 888/233-8582 ◆ Email: nchv@nchv.org ◆ Website: http://www.nchv.org

May 17, 2010

Honorable Sen. Daniel Akaka
Chairman, Senate Committee on Veterans Affairs
412 Russell Senate Office Building
Washington, D.C. 20515

Honorable Sen. Richard Burr
Ranking Member, Senate Committee on Veterans Affairs
825A Hart Senate Office Building
Washington, D.C. 20515

Dear Chairman Akaka and Ranking Member Burr,

The National Coalition for Homeless Veterans is sending this letter in support of S. 3377, a bill to improve the Department of Veterans Affairs (VA) Multifamily Transitional Housing Loan Guarantee Program. We appreciate the bipartisan effort of the committee in drafting this legislative proposal, and can attest to the great need for housing assistance the measure addresses.

As you know, the original purpose of the program was to provide housing for formerly homeless and extreme low-income veterans who cannot afford housing at local market rates. This would include veterans being served through a VA Grant and Per Diem Program (GPD), and employed veterans exiting a homeless program with incomes that do not allow the client to pay for housing at prevailing market rates, a large number of whom are GPD graduates.

During the last several years we have seen the housing cost burden of younger veterans from Operations Enduring Freedom and Iraqi Freedom (OEF/OIF), and their families, worsen due to the housing crisis and rising unemployment. We also now have evidence that the number of extreme low-income veteran families – those living at or below 50% of the federal poverty level – may number in excess of 630,000.

We view S. 3377 as an essential component of a national strategy to end and prevent homelessness among veterans – particularly low-income veteran families in areas affected by a critical shortage of affordable and supportive housing units, and for younger OEF/OIF veteran families who are experiencing extreme economic hardships.

This measure would spur the development of at least five veteran housing projects that would provide transitional housing and supportive services to hundreds of homeless and at-risk veteran families who are working their way toward self sufficiency. The authorization for the loans to include provisions for deferred payments, forbearance and forgiveness of debt removes barriers that often keep community-based nonprofit organizations from partnering with government service agencies to develop housing and services programs for the homeless.

NCHV strongly recommends including in the bill wording that allows funding for "longer-term" transitional housing. Currently, "transitional" housing under VA programs means residential assistance for up to two years. However, many formerly homeless veterans and extreme low-income veteran families need assistance for a longer period while increasing their earnings potential or awaiting availability of Section 8, HUD-VASH or other "permanent" housing options for which they may be eligible.

S. 3377 allows for the development of "other types of residential units, or other uses that the Secretary considers necessary for the sustainability of the project." NCHV regards this as perhaps the most critical provision of the proposal. Increasingly, the need for housing and services is demonstrated by the number of disabled and extreme low-income veterans and families who need permanent supportive housing.

We believe this bill encourages development of mixed-use veteran housing communities that include transitional, "longer-term" and permanent housing units, which would allow development partnerships to use low-income housing tax credits in their financing plans.

We commend the Senate Committee on Veterans Affairs for its study of the Multifamily Transitional Housing Loan program, and efforts to enable the Department of Veterans Affairs to immediately utilize the funds that have been earmarked for homeless veteran housing. Granting the Secretary limited authority to negotiate contracts that will incentivize the development of housing for formerly homeless veterans and extreme low-income veteran families is consistent with the President's and Secretary's Five-Year Plan to End Veteran Homelessness.

Sincerely,

John Driscoll
President and CEO

George Basher
Chairman, Board of Directors

THE MILITARY COALITION

201 North Washington Street
Alexandria, Virginia 22314
(703) 838-8143

May 7, 2010

The Honorable Patty Murray
United States Senate
Washington, DC 20510

Dear Senator Murray:

The Military Coalition (TMC), a consortium of uniformed services and veterans associations representing more than 5.5 million current and former servicemembers and their families and survivors, writes to thank you for your leadership in sponsoring S.3234, the *Veteran Employment Assistance Act of 2010.*

S. 3234 is a comprehensive bill that offers greatly needed support and innovative approaches to the growing problem of unemployment among our nation's Iraq and Afghanistan veterans.

Veteran unemployment has ballooned to over 21% among OIF – OEF veterans and the rate of unemployment among women veterans is rising even faster.

TMC has been in the forefront of urging coordinated action in Congress on "seamless transition" initiatives for our veterans. Your bill is a pragmatic approach to addressing the tough challenges that our veterans face when they complete military service.

S.3234 would realize one of our top priorities for veterans: job training authority in the new Post-9/11 GI Bill. Every GI Bill program since World War II except for the new progam has included job training benefits.

In addition, your bill would enhance the ability to transition military skills to the civilian workforce; improve small business assistance programs for veterans; and promote new ways to improve veterans' employment assistance programs.

Our veterans have put their lives on the line to protect the freedom we sometimes take for granted. They have the skills, discipline and talent to succeed in the marketplace but sometimes face unique challenges in finding meaningful employment or starting a business. The Veterans Employment Assistance Act will help veterans find their own path to future success and take their place among our nation's leaders.

The Military Coalition strongly endorses S. 3234 and pledges its collective efforts to see it enacted this year.

Sincerely,

The Military Coalition
(Signatures enclosed)

The Military Coalition, 7 May 2010 re S.3234-HR 5120

Air Force Association

Air Force Sergeants Association (AFSA)

Air Force Women Officers Associated

American Logistics Association

AMVETS

Army Aviation Assn. of America

Assn. of Military Surgeons of the United States

Assn. of the US Army

Association of the United States Navy

Commissioned Officers Assn. of the US Public Health Service, Inc

CWO & WO Assn. US Coast Guard

Enlisted Association of the National Guard of the US

Fleet Reserve Assn.

Gold Star Wives of America, Inc.

Iraq & Afghanistan Veterans of America

Jewish War Veterans of the USA

Marine Corps League

Marine Corps Reserve Association

Military Officers Assn. of America

Military Order of the Purple Heart

National Guard Assn. of the US

National Military Family Assn.

National Order of Battlefield Commissions

Naval Enlisted Reserve Assn.

Non Commissioned Officers Assn. of the United States of America

Reserve Enlisted Assn. of the US

Reserve Officers Assn

Society of Medical Consultants to the Armed Forces

The Military Chaplains Assn. of the USA

The Retired Enlisted Assn.

USCG Chief Petty Officers Assn.

US Army Warrant Officers Assn.

Veterans of Foreign Wars of the US

*May 18, 2010.*

Hon. DANIEL K. AKAKA,
*Chairman,*
*Committee on Veterans' Affairs,*
*U.S. Senate, Washington, DC.*

Hon. RICHARD BURR
*Ranking Member,*
*Committee on Veterans' Affairs,*
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN AKAKA AND RANKING MEMBER BURR: The undersigned organizations are writing to express our support for S. 3377, legislation to improve the multifamily transitional housing loan program of the Department of Veterans Affairs. We are especially appreciative of Senator Burr's leadership in crafting and introducing this legislation, and for Senator Akaka's leadership in bringing it before the Committee for consideration.

Homelessness among veterans is a national tragedy. The Department of Veterans Affairs (VA) recently reported that on any given night, 131,000 veterans are homeless. While most currently homeless veterans served during prior conflicts or in peacetime, the newest generation of combat veterans of Operation Enduring Freedom and Iraqi Freedom (OEF-OIF), both men and women, are returning home and suffering from war related conditions and a weak economy that may put them at risk for homelessness. A growing trend in homelessness among these new veterans points to a need to develop a coordinated approach to reduce and ultimately eliminate homelessness among all veterans.

In 1998, Congress authorized the Multifamily Transitional Housing Loan Guarantee Program (MTHLG) in section 601 of Public Law 105–368. While well-intentioned, this pilot program authorizing the VA to guarantee up to 15 secured loans to develop transitional housing fell far short of its potential. Despite the VA's best efforts to run an effective program, only one housing development—the St. Leo Campus for Veterans residence in Chicago, IL—was able to successfully utilize this program.

In August 2008, then-Secretary James Peake delivered a final report to your and other key Congressional Committees detailing its findings on the MTHLG program. In his letter, Secretary Peake announced the VA would not expend any additional funding on guaranteeing new projects and noted that significant modifications to the program would be needed to ensure its success. Fortunately VA staff worked diligently to evaluate the program and make recommendations for improvement.

Without Congressional action over $40 million designated to assist homeless veterans will go unspent. S. 3377 would correct this.

S. 3377 incorporates many of the VA's prudent recommendations to improve the MTHLG that were issued in the Department's report to Congress. First, the legislation modifies the program in a very important way by allowing the Department to issue loans, rather than merely guaranteeing loans, to help produce transitional housing. The legislation also wisely creates a revolving fund so that more veterans can be assisted as loans are repaid, as property is disposed of, or if Congress should decide to directly allocate additional funds to this cause.

Two other critical provisions grant the Department additional flexibility. By granting the Secretary additional authority in the terms and conditions of the loans provided under this program, the bill's sponsors made an astute read of the financial tools that must be made available for successful affordable housing development. By specifically allowing the Secretary to approve other types of spaces to be included in multifamily transitional housing projects, the legislation wisely recognizes demand for an array of affordable housing options. In addition, this provision allows very beneficial services, such as job training, to potentially be provided on site to the benefit of the veteran residents.

Again, we are deeply grateful for your leadership in introducing and considering S. 3377. As you both have repeatedly articulated, our nation's veterans deserve so much. Access to safe and affordable housing for those who have fallen on hard times

seems to be the least we can do. Please convey our support for this legislation to your fellow colleagues on the Committee and throughout the Senate.

Sincerely,

CORPORATION FOR SUPPORTIVE HOUSING,
NATIONAL ALLIANCE TO END HOMELESSNESS,
VOLUNTEERS OF AMERICA,
COMMON GROUND,
LOCAL INITIATIVES SUPPORT CORPORATION (LISC),
NATIONAL POLICY AND ADVOCACY COUNCIL ON HOMELESSNESS.

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